

# EXHIBIT A

JUL 18 2003

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

<b>In re: Fleming Companies, Inc.</b>	)	<b>Chapter 11</b>
	)	
<b>Debtor,</b>	)	
	)	<b>Case No. 03-10945 (MFW)</b>
<b>The Pictsweet Company</b>	)	<b>(Jointly Administered)</b>
<b>(f/k/a United Foods, Inc.)</b>	)	
	)	
<b>Movant,</b>	)	
	)	
<b>v.</b>	)	<b>Contested Matter</b>
	)	
<b>Fleming Companies, Inc.,</b>	)	
	)	
<b>Respondent.</b>	)	

**AFFIDAVIT OF JAMES STRAIT**

James Strait, being duly sworn, states under oath as follows:

1. James Strait is the National Accounts Sales Manager for The Pictsweet Company (Pictsweet). Mr. Strait is the person at Pictsweet primarily responsible for Pictsweet's business with the military and is therefore involved in Pictsweet's relationship with the Debtor Fleming Companies, Inc. (Fleming).

2. Pictsweet is a Delaware corporation with principal offices located at Ten Pictsweet Drive, Bells, Tennessee 38006-0119. (Pictsweet was formerly known as United Foods, Inc. It changed its name to Pictsweet on June 19, 2003.) Pictsweet is a frozen vegetable producer and has been in business since the 1940's.

3. Pictsweet has a contract with the United States military to supply frozen vegetables to all of the military bases throughout the world. Pictsweet projects that for fiscal

year 2003 - 2004 it will sell to the military a total of approximately 1,054,300 cases of frozen vegetable for a sum total of approximately \$10,461,000. This is a major contract for Pictsweet.

4. Pictsweet sells to the military a number of "mandatory items," which are referred to as "K-1" items. The military requires that all "K-1" items be fully stocked at all times in its commissaries. The military requires its suppliers to maintain a 98% "fill rate" of "K-1" items. This means that suppliers must supply sufficient inventory on a timely basis to enable the military's commissaries to keep its shelves at least 98% filled with "K-1" product. If a supplier fails to maintain a 98% "fill-rate," then the military could move its business to another supplier.

5. Pictsweet contracts with distributors to distribute food to Pictsweet's customers. Distributors are responsible for placing orders and shipping and delivering product to the customers on a timely basis.

6. The military does not dictate to its suppliers which distributors they may or should use. It is up to the suppliers to make their own arrangements with distributors.

7. Pictsweet had entered into four (4) distributorship contracts with Fleming covering, respectively, military bases in the following regions: Geneva, Alabama; Salt Lake City, Utah; Garland, Texas; and Kapolei, Hawaii. Copies of these contracts are attached hereto as Exhibits 1 through 4, respectively. Pictsweet pays Fleming a service fee calculated as a percentage of the brand commercial price list of the product delivered by the distributor to the military bases. The contracts require Fleming, among other things, to "maintain adequate inventory levels necessary to fill all military orders in full and on time." The contracts are each subject to cancellation by either party upon a 30-day written notice. The contracts are on 10-day/2% terms, which means that payment for product delivered to the distributor is required

within ten (10) days of delivery, and if payment is made within the ten (10) day period, the distributor receives a discount of 2%.

8. In 2002, Pictsweet sold the following volumes of product through Fleming:

Fleming – Hawaii

Military:	28,838 cases for \$286,073.
Retail:	10,359 cases for \$122,973
Total:	39,197 cases for \$409,046

Fleming – Salt Lake City

Military:	8,056 cases for \$79,915
Retail:	43,726 cases for \$472,466
Total:	51,782 cases for \$552,381

Fleming – Geneva, Alabama

Military:	61,765 cases for \$512,709
Retail:	44,230 cases for \$497,723
Total:	105,995 cases for \$1,110,432

Fleming – Garland, Texas

Military:	27,450 cases for \$272,304
Retail:	19,224 cases for \$209,089
Total:	46,674 cases for \$481,393

9. Fleming filed bankruptcy on April 1, 2003.

10. On May 8, 2003, Fleming gave Pictsweet notice that Fleming was shutting down its Salt Lake City operations (which covered 3 military bases) on June 1, 2003. Pictsweet was forced on short notice to replace Fleming with two distributors to cover those bases; and, in order

to do this, Pictsweet found it necessary to pay one of those distributors a premium to take over that distributorship.

11. Also around the time of the bankruptcy, Fleming gave Pictsweet 30 days notice that it was terminating its Geneva, Alabama contract with Pictsweet. Pictsweet replaced Fleming with two distributors to cover those bases.

12. Shortly thereafter, on May 30, 2003, Pictsweet discovered that under the Garland, Texas contract, Fleming's inventory of Pictsweet product was extraordinarily low. Fleming's inventory level in Garland, Texas, was insufficient to adequately supply the military bases in that region. Pictsweet also learned from its military representative that in fact the military bases covered under the Garland, Texas contract were not being adequately supplied with Pictsweet inventory and that immediate action needed to be taken to correct this problem. Because of this situation, on that same date, May 30, 2003, Jim Strait called Mike Dawson of Fleming (who is Fleming's person in charge of distributions to the military) and said that Pictsweet needed to contract with someone else for the region covered by Garland Texas. Mr. Dawson responded by saying that he understood. Pictsweet promptly made arrangements with another distributor for the Texas region and sent Mr. Dawson an email informing him of the change.

13. Subsequently, on June 20, 2003, Mr. Dawson sent Mr. Strait a letter, a copy of which is attached as Exhibit 5. In this letter, Fleming alleged that Pictsweet had "unilaterally" terminated the Texas military distribution contract in violation of the automatic stay. Fleming offered to settle any dispute over that alleged termination on certain conditions that would allow the "retroactive termination of your military distribution agreement(s), except as to Hawaii." Pictsweet has not responded to this letter.

14. The only remaining contract between Pictsweet and Fleming is the Hawaii contract.

15. The Hawaii contract provides that Fleming is the distributor of Pictsweet product to the following military installations: Pearl Harbor, Scholfield Barracks, Fort Shafter, Hickam AFB, Barbers Point NAS, and Kaneohe Commissary. Normally orders are placed every 2 weeks. When an order is placed, Pictsweet delivers the product to Fleming in Anaheim, California, and Fleming transports the product by ship to Hawaii.

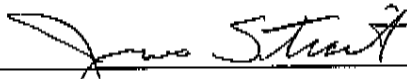
16. Fleming is not performing its obligations under the Hawaii contract. In May, 2003, Fleming placed 6 orders for a total of 3,568 cases of product (for \$42,148) to be distributed to the Hawaii bases. Because Fleming was behind on its payments on prior orders, Pictsweet did not release this product until June 9 (4 orders) and June 16 (2 orders) when Fleming cleared up its past-due post-petition payable. It should take approximately one week for the goods to arrive in Hawaii, but the product that was released to Fleming on June 9 and June 16 did not arrive in Hawaii until July 4 and 5, 2003. It is not clear why there was a delay in the transport of the product to Hawaii.

17. Pictsweet was informed by its military representative in Hawaii that during the first half of June, 2003, Fleming maintained only a 68% "fill rate" of Pictsweet product at the Hawaii military bases (compared to the military's requirement of a 98% "fill rate"); and, during the second half of June, 2003, the "fill rate" of Pictsweet product at the Hawaii military bases fell to 24%. (Until recently, it was Fleming's normal practice to send Pictsweet monthly fill-rate reports that reflected Fleming's deliveries to the military bases. Since the beginning of May, 2003, however, Fleming has failed to send Pictsweet any fill-rate reports.)

18. Today, July 17, 2003, Pictsweet received from Fleming four (4) orders for product. These are the first orders that Pictsweet has received from Fleming Hawaii since May, 2003. These orders are not timely, and based upon recent events, Pictsweet has no assurance that these orders will adequately stock the Hawaii military bases.

19. Fleming's failure to timely and properly supply the Hawaii military bases with the required levels of Pictsweet product is threatening Pictsweet's entire contract with the military. Although the Hawaii business represents only approximately 3% of Pictsweet's total volume of business with the military, Fleming's failure is jeopardizing over \$10 million of Pictsweet's annual sales.

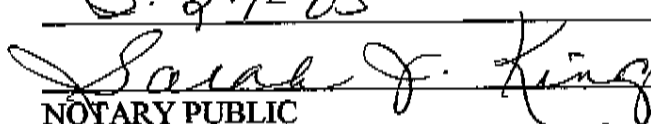
20. The harm Pictsweet would suffer from the military's termination of its contract with Pictsweet, which could result from Fleming's failures to perform its obligations in Hawaii, would be immediate and irreparable.

  
\_\_\_\_\_  
JAMES STRAIT

Crockett County            )  
  )  
State of Tennessee        )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 17<sup>th</sup> day of July, 2003, by James Strait

My commission expires:

3.27-05  
  
\_\_\_\_\_  
NOTARY PUBLIC

[ SEAL ]

# EXHIBIT 1





December 8, 1992

Military Distributor  
Letter Agreement  
D001

Ms. Rebecca Wesley  
Fleming Foods of Alabama, Inc.  
2001 W. Magnola Avenue  
Geneva, AL 36340

REVISED

Dear Rebecca:

This letter is to confirm the appointment of your company (hereafter referred to as "DISTRIBUTOR") as Military Distributor for Pictsweet Frozen Foods (hereinafter referred to as "PFF") to the following military installations, effective January 1, 1993.

Maxwell AFB  
Gunter AFB  
Fort Gillem  
Redstone Arsenal  
McLB Albany

Fort McClellan  
Fort Rucker  
Fort McPherson

Robins AFB  
Arnold AFB  
Columbus  
Moody AFB

The above is the only military installations authorized for shipment of Pictsweet brand products agreement unless changes in writing subsequent to above effective dates.

PFF agrees to the following performance and obligations:

1. Pay to DISTRIBUTOR a service fee of 10% based on the Pictsweet brand commercial price list in effect at the time of pick up or delivery to the DISTRIBUTOR. This service fee is in consideration of the responsibilities of the DISTRIBUTOR as set forth herein, next section.
2. Ship such goods as ordered by DISTRIBUTOR based on the following trade terms: 2% 10 Days.
3. Invoice military installations promptly for product(s) received by delivery from DISTRIBUTOR facilities, as evidenced by properly signed delivery ticket(s), and issue credit memorandum to DISTRIBUTOR within 10 days in accordance with Paragraph 1 above, including the agreed service fee.
4. Accept credit memos as cash, against invoices; and at any time such credits exceed charges to DISTRIBUTOR, reimburse DISTRIBUTOR by check for such excess, upon request.

5. Provide DISTRIBUTOR, through Dunham & Smith Agencies, with current selling prices to military installations for pricing of delivery tickets in accordance with military requirements.
6. Provide DISTRIBUTOR with current purchase prices (Pictsweet) in effect at time of shipment.
7. Provide disposition instructions through Dunham & Smith Agencies representative for slow moving and/or discontinued items, after all efforts to make disposition locally have been exhausted. Service fee will not be paid on items returned to PFF.
8. Provide prompt and courteous Sales Service, answer questions or handle problems concerning deliveries to DISTRIBUTOR or DISTRIBUTOR delivered to military installations. (Please contact MILITARY SALES SERVICE).

DISTRIBUTOR agrees to the following performance and obligations:

1. Maintain adequate inventory levels necessary to fill all military orders in full and on time and to bring any additional items instated by the military installation(s), as requested by Dunham & Smith Agencies, and in the event sales are made other than to military installations, such sales will not be allowed to deplete inventories to the point of creating mal-performance (failure to deliver to military) on any items being used by military installations.
2. Provide adequate storage facilities for all PFF products and proper delivery equipment to maintain products at zero degrees or lower at all times. Also provide insurance to cover the value of merchandise warehoused for delivery to military.
3. Forward all properly signed delivery tickets to PFF promptly (not later than five days after delivery date), with complete information (military purchase order number, and/or call number, with order date and date of delivery) for invoicing to military by PFF. Also show PFF product codes (or military SB code), proper description of products and unit price to permit proper invoicing.
4. Not to substitute any competitive product(s) for PFF products ordered by military installation(s).
5. Not to made sales presentations to military installations on behalf of PFF or Dunham & Smith Agencies.
6. To honor Pictsweet brand commercial pricing and terms of sale and/or shipment, including product and assortment minimums (minimum each item 10 cases; minimum assortment 10,000 lbs.).
7. The Fleming Foods of Alabama, Inc. should place orders by UCS as follows:

Phone (800) 367-7412  
Fax (800) 835-6261  
Address Ten Pictsweet Drive; Bells, TN 38006  
Contact Della Ligon or Betty Blasingame

The Broker for Pictsweet Frozen Foods is: Dunham & Smith Agencies, Inc.  
(St. Louis, MO)

Phone (803) 732-1805  
Fax (803) 781-9057  
Address 206 Centerfield Road; Columbia, SC 29212  
Contact Bobby Lassiter

The Fleming Foods of Alabama Inc. should send all reports to Pictsweet Frozen Foods:

Phone (800) 367-7412  
Fax (800) 635-6261  
Address Ten Pictsweet Drive; Bells, TN 38006  
Contact Mike Oliver

- 8. Assume responsibility of maintaining current pricing information, obtainable from Dunham & Smith representative of PFF upon request, to be reconfirmed each month.

This agreement is subject to cancellation by either party upon a 30-day written notice; and any merchandise unaccounted for after disposition, physical count or all issuance of credits, will be cleared by cash payment to PFF.

Please indicate your acceptance of this agreement by signing both copies, retain one copy for your files and return the original to the undersigned Pictsweet Frozen Foods party. Thank you.

ACCEPTED BY:

PICTSWEET FROZEN FOODS

FLEMING FOODS of ALABAMA, Inc  
Company/Distributor

By: Michael W. Oliver  
Michael W. Oliver  
Manager of Military Sales

By: Robert F. Harris  
ROBERT F. HARRIS  
VICE-PRESIDENT

Date: 1/18/93

Date: 1/25/93

## **EXHIBIT 2**

Exhibit

PICTSWEET FROZEN FOODS

# PICTSWEET

February 11, 1992

Military Distributor  
Letter Agreement  
D001

Fleming Companies, Inc.  
Salt Lake City Division  
2205 West 1500 South  
P. O. Box 26828  
Salt Lake City, UT 84104

Dear Gentlemen:

This letter is to confirm the appointment of your company (hereinafter referred to as "DISTRIBUTOR") as Military Distributor for Pictsweet Frozen Foods (hereinafter referred to as "PFF") to the following military installations, effective February 17, 1992.

Mountain Home	Hill AFB	Dugway Proving Grounds
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The above is the only military installations authorized for shipment of Pictsweet brand products agreement unless changes in writing subsequent to above effective dates.

PFF agrees to the following performance and obligations:

1. Pay to DISTRIBUTOR a service fee of 10% based on the Pictsweet brand commercial price list in effect at the time of delivery to the DISTRIBUTOR. This service fee is in consideration of the responsibilities of the DISTRIBUTOR as set forth herein, next section.
2. Ship such goods as ordered by DISTRIBUTOR based on the following trade terms:  
2% 10 Days.
3. Invoice military installations promptly for product(s) received by delivery from DISTRIBUTOR facilities, as evidenced by properly signed delivery ticket(s), and simultaneously issue credit memorandum to DISTRIBUTOR in accordance with Paragraph 1 above, including the agreed service fee.
4. Accept credit memos as cash, against invoices; and at any time such credits exceed charges to DISTRIBUTOR, reimburse DISTRIBUTOR by check for such excess, upon request.
5. Provide DISTRIBUTOR, through Dunham & Smith Agencies, with current selling prices to military installations for pricing of delivery tickets in accordance with military requirements.

Agreement

6. Provide DISTRIBUTOR with current purchase prices (Pictsweet) in effect at time of shipment.
7. Provide disposition instructions through Dunham & Smith Agencies representative for slow moving and/or discontinued items, after all efforts to make disposition locally have been exhausted. Service fee will not be paid on items returned to PFF.
8. Provide prompt and courteous Sales Service, answer questions or handle problems concerning deliveries to DISTRIBUTOR or DISTRIBUTOR delivered to military installations. (Please contact MILITARY SALES SERVICE).

DISTRIBUTOR agrees to the following performance and obligations:

1. Maintain adequate inventory levels necessary to fill all military orders in full and on time; and to bring any additional items instated by the military installation(s), as requested by Dunham & Smith Agencies, and in the event sales are made other than to military installations, such sales will not be allowed to deplete inventories to the point of creating mal-performance (failure to deliver to military) on any items being used by military installations.
2. Provide adequate storage facilities for all PFF products and proper delivery equipment to maintain products at zero degrees or lower at all times. Also provide insurance to cover the value of merchandise warehoused for delivery to military.
3. Forward all properly signed delivery tickets to PFF promptly (not later than five day after delivery date), with complete information (military purchase order number, and/or call number, with order date and date of delivery) for invoicing to military by PFF. Also show PFF product codes (or military SB code), proper description of products and unit price to permit proper invoicing.
4. Not to substitute any competitive product(s) for PFF products ordered by military installation(s).
5. Not to make sales presentations to military installations on behalf of PFF or Dunham & Smith Agencies.
6. To honor Pictsweet brand commercial pricing and terms of sale and/or shipment, including product and assortment minimums (minimum each item 10 cases; minimum assortment 10,000 lbs.).

All billing for military shipments for all PFF products should be sent to PFF in Bells, Tennessee.

Agreement

- 7. Assume responsibility of maintaining current pricing information, obtainable from Dunham & Smith representative of PFF upon request, to be reconfirmed each month.

This agreement is subject to cancellation by either party upon a 30-day written notice; and any merchandise unaccounted for after disposition, physical count or all issuance of credits, will be cleared by cash payment to PFF.

Please indicate your acceptance of this agreement by signing both copies, retain one copy for your files and return the original to the undersigned Pictsweet Frozen Foods party.

Thank you.

ACCEPTED BY:

PICTSWEET FROZEN FOODS

FLEMING Co.  
Company/Distributor

By: David R. Klyn  
David R. Klyn  
Director of Military Sales

By: [Signature]

Date: 2/27/92

Date: 2/13/92

## **EXHIBIT 3**



**PICTSWEET**

PICTSWEET FROZEN FOODS

July 7, 1992

Military Distributor  
Letter Agreement  
D001Scrivner, Inc.  
P. O. Box 26146  
Oklahoma City, OK 73126Jim Strait:  
COPY OF CONTRA  
SCRIVNER/HEMING  
888-662-7651

Dear Gentlemen:

This letter is to confirm the appointment of your company (hereafter referred to as "DISTRIBUTOR") as Military Distributor for Pictsweet Frozen Foods (hereinafter referred to as "PFF") to the following military installations, effective August 15, 1992.

Dyess AFB	Goodfellow AFB	Carswell AFB	Vance AFB
Reese AFB	McConnell AFB	Sheppard AFB	
Altus AFB	Ft. Sill	Tinker AFB	

The above is the only military installations authorized for shipment of Pictsweet brand products agreement unless changes in writing subsequent to above effective dates.

PFF agrees to the following performance and obligations:

1. Pay to DISTRIBUTOR a service fee of 11% based on the Pictsweet brand commercial price list in effect at the time of pick up or delivery to the DISTRIBUTOR. This service fee is in consideration of the responsibilities of the DISTRIBUTOR as set forth herein, next section.
2. Ship such goods as ordered by DISTRIBUTOR based on the following trade terms: 2% 10 Days.
3. Invoice military installations promptly for product(s) received by delivery from DISTRIBUTOR facilities, as evidenced by properly signed delivery ticket(s), and simultaneously issue credit memorandum to DISTRIBUTOR in accordance with Paragraph 1 above, including the agreed service fee.
4. ~~Accept credit memos as cash, against invoices; and at any time such credits exceed charges to DISTRIBUTOR, reimburse DISTRIBUTOR by check for such excess, upon request.~~  
Pay military invoices by check within 30 days of invoice date.
5. Provide DISTRIBUTOR, through Dunham & Smith Agencies, with current selling prices to military installations for pricing of delivery tickets in accordance with military requirements.

6. Provide DISTRIBUTOR with current purchase prices (Pictsweet) in effect at time of shipment.
7. Provide disposition instructions through Dunham & Smith Agencies representative for slow moving and/or discontinued items, after all efforts to make disposition locally have been exhausted. Service fee will not be paid on items returned to PFF.
8. Provide prompt and courteous Sales Service, answer questions or handle problems concerning deliveries to DISTRIBUTOR or DISTRIBUTOR delivered to military installations. (Please contact MILITARY SALES SERVICE).

DISTRIBUTOR agrees to the following performance and obligations:

1. Maintain adequate inventory levels necessary to fill all military orders in full and on time and to bring any additional items instated by the military installation(s), as requested by Dunham & Smith Agencies, and in the event sales are made other than to military installations, such sales will not be allowed to deplete inventories to the point of creating mal-performance (failure to deliver to military) on any items being used by military installations.
2. Provide adequate storage facilities for all PFF products and proper delivery equipment to maintain products at zero degrees or lower at all times. Also provide insurance to cover the value of merchandise warehoused for delivery to military.
3. Forward all properly signed delivery tickets to PFF promptly (not later than five days after delivery date), with complete information (military purchase order number, and/or call number, with order date and date of delivery) for invoicing to military by PFF. Also show PFF product codes (or military SB code), proper description of products and unit price to permit proper invoicing.
4. Not to substitute any competitive product(s) for PFF products ordered by military installation(s).
5. Not to made sales presentations to military installations on behalf of PFF or Dunham & Smith Agencies.
6. To honor Pictsweet brand commercial pricing and terms of sale and/or shipment, including product and assortment minimums (minimum each item 10 cases; minimum assortment 10,000 lbs.).

All billing for military shipments for all PFF products should be sent to PFF in Bells, Tennessee.

Agreement

7. Assume responsibility of maintaining current pricing information, obtainable from Dunham & Smith representative of PFF upon request, to be reconfirmed each month.

This agreement is subject to cancellation by either party upon a 30-day written notice; and any merchandise unaccounted for after disposition, physical count or all issuance of credits, will be cleared by cash payment to PFF.

Please indicate your acceptance of this agreement by signing both copies, retain one copy for your files and return the original to the undersigned Pictsweet Frozen Foods party. Thank you.

ACCEPTED BY:

PICTSWEET FROZEN FOODS

Scribner Inc.  
Company/Distributor

By: David R. Klyn  
David R. Klyn  
Director of Military Sales

By: J. Wayne Hall

Date: 7-20-92

Date: 7/7/92

## **EXHIBIT 4**

June 14, 2000

Military Distributor  
Letter Agreement

Fleming Companies, Inc.  
91-315 Hanua Street  
Kapolei, HI 96707

Dear Gentlemen:

This letter is to confirm the appointment of your company (hereinafter referred to as "DISTRIBUTOR") as Military Distributor for Pictsweet Frozen Foods (hereinafter referred to as "PFF") to the following military installations, effective July 1, 2000.

Pearl Harbor  
Scholfield Barracks

Fort Shafter  
Hickam AFB

Barbers Point NAS  
Kaneohe Commissary

The above are the only military installations authorized for shipment of Pictsweet brand products agreement unless changes in writing subsequent to above effective dates.

PFF agrees to the following performance and obligations:

1. Pay to DISTRIBUTOR a service fee of 12% based on the Pictsweet brand commercial price list in effect at the time of delivery to the DISTRIBUTOR. This service fee is in consideration of the responsibilities of the DISTRIBUTOR as set forth herein, next section.
2. Ship such goods as ordered by DISTRIBUTOR based on the following trade terms:  
2% 10 Days.
3. Invoice military installations promptly for product(s) received by delivery from DISTRIBUTOR facilities, as evidenced by properly signed delivery ticket(s), and simultaneously issue credit memorandum to DISTRIBUTOR in accordance with Paragraph 1 above, including the agreed service fee.
4. Reimburse DISTRIBUTOR by check.
5. Provide DISTRIBUTOR, through Dunham & Smith Agencies, with current selling prices to military installations for pricing of delivery tickets in accordance with military requirements.

## Agreement

6. Provide DISTRIBUTOR with current purchase prices (Pictsweet) in effect at time of shipment.
7. Provide disposition instructions through Dunham & Smith Agencies representative for slow moving and/or discontinued items, after all efforts to make disposition locally have been exhausted. Service fee will not be paid on items returned to PFF.
8. Provide prompt and courteous Sales Service, answer questions or handle problems concerning deliveries to DISTRIBUTOR or DISTRIBUTOR delivered to military installations. (Please contact MILITARY SALES SERVICE).

DISTRIBUTOR agrees to the following performance and obligations:

1. Maintain adequate inventory levels necessary to fill all military orders in full and on time; and to bring any additional items instated by the military installation(s), as requested by Dunham & Smith Agencies, and in the event sales are made other than to military installations, such sales will not be allowed to deplete inventories to the point of creating mal-performance (failure to deliver to military) on any items being used by military installations.
2. Provide adequate storage facilities for all PFF products and proper delivery equipment to maintain products at zero degrees or lower at all times. Also provide insurance to cover the value of merchandise warehoused for delivery to military.
3. Forward all properly signed delivery tickets to PFF promptly (not later than five days after delivery date), with complete information (military purchase order number, and/or call number, with order date and date of delivery) for invoicing to military PFF. Also show PFF product codes (or military SB code), proper description of products and unit price to permit proper invoicing.
4. Not to substitute any competitive product(s) for PFF products ordered by military installation(s).
5. Not to make sales presentations to military installations on behalf of PFF or Dunham & Smith Agencies.

Agreement

- 6. To honor Pictsweet brand commercial pricing and terms of sales and/or shipment, including product and assortment minimums (minimum each item 10 cases; minimum assortment 10,000 lbs.).

All billing for military shipments for all PFF products should be sent to PFF in Bells, Tennessee.

- 7. Assume responsibility of maintaining current pricing information, obtainable from Dunham & Smith representative or PFF upon request, to be reconfirmed each month.

This agreement is subject to cancellation by either party upon a 30-day written notice; and any merchandise unaccounted for after disposition, physical count or all issuance of credits, will be cleared by cash payment to PFF.

Please indicate your acceptance of this agreement by signing both copies, retain one copy for your files and return the original to the undersigned Pictsweet Frozen Foods party.

Thank you.

ACCEPTED BY:

PICTSWEET FROZEN FOODS

Fleming  
Company/Distributor

By: Jim Strait  
Jim Strait  
National Accounts Sales Manager

By: [Signature]

Date: 6/25/00

Date: 7/5/00

## **EXHIBIT 5**



June 20, 2003

Pictsweet  
Jim Strait – military Sales Manager  
Ten Pictsweet Dr.  
Bells, TN 38006

Via Email – 6/20/03

Ph 901 422 7600

Dear Mr. Strait:

You have unilaterally terminated your military distribution agreement with Fleming Companies, Inc. or an affiliate without a bankruptcy court order allowing you to do so. As you know, Fleming Companies, Inc. and certain of its subsidiaries (the "Debtors") filed for protection under the United States Bankruptcy Code, Title 11, Chapter 11, on April 1, 2003. As of that date, the automatic stay was created under federal law, prohibiting third parties from taking any actions to obtain possession of property of the Debtors or to exercise control over property of the Debtors.

The Debtors' interests in the military distribution agreements are property of the Debtors' estates. Therefore, the Debtors view your termination without court approval to lift or modify the automatic stay as a violation of the automatic stay imposed by federal law. As such, your actions are null and void and the Debtors have claims arising against you for the violation.

Nonetheless, in the interest of settlement, the Debtors are willing to resolve their claims against you on the following terms:

1. The Debtors will stipulate to a modification of the stay to allow the retroactive termination of your military distribution agreement(s), except as to Hawaii;
2. The Debtors will waive their right to prosecute you for violation of the automatic stay provided that you pay to the Debtors within three business days after execution of this letter the amounts that you owe the Debtors under the agreements at issue. The amounts will be held in trust by the Debtors until approval of this settlement by the bankruptcy court;
3. You agree to pick up inventory designated by the Debtors that is military-specific inventory promptly and remit to the Debtors the amount owing for those goods, reconciling in good faith within 30 days of the termination date.
4. The Debtors and you will mutually release each other from all claims arising out of their relationship as to the terminated locations.

The Debtors will be filing a settlement procedures motion that, if approved, will allow for settlements of the Debtors' claims to be approved on notice to the Debtors' creditors' committee and certain other interested parties without the need for a court hearing. The hearing on that motion is presently set for June 25, 2003.

It is the Debtors' sincere hope that they may work out their claims with you in a timely fashion through the above proposal. Please respond to this letter by calling me at 972-906-8525 by **July 20, 2003** or we will assume that you are not willing to agree to the terms above and the Debtors will proceed with formal action accordingly.

Very truly yours,

Mike Dawson

Fleming Director of Military

The above terms are agreed to and accepted by:

\_\_\_\_\_

Date: \_\_\_\_\_