

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

FILED
JUL 23 2003
CLERK OF COURT
DELAWARE

RE:

Chapter 11

Fleming Companies, Inc., et al.,

Case No. 03-10945 (MFW)

Debtors

(Jointly Administered)

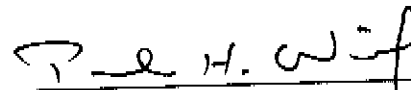
OBJECTION TO CURE AMOUNT

Consumers Cooperative Association of Eau Claire ("CCA") hereby objects to the cure amount set forth in the Cure Amount Schedule(s) as attached to the Supplemental Notice Re Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases dated July 19, 2003 in Connection with Sale Motion in the above-referenced matter. Objections relate to Contract Assignment Number 2016 and 2048.

The basis of the objection is due to the failure of the Debtor to maintain the average service level as required by Section 9 of that certain Supply Agreement by and between the Fleming Companies, Inc. and CCA which Supply Agreement is dated May 22, 2002, a copy of which is attached hereto as Exhibit "A". Pursuant to Section 9 the Debtor has a period of twelve (12) weeks after this written notice to attain the service level as required pursuant to the terms and conditions of the Supply Agreement. In the event of the failure to attain such service level remedies are as established in the Supply Agreement.

Dated this 25th day of July, 2003.

Weld, Riley, Prenn & Ricci, S.C.



Paul H. Weinke, Attorney for Consumers
Cooperative Association of Eau Claire

Paul H. Weinke
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SUPPLY AGREEMENT

THIS SUPPLY AGREEMENT (the "Agreement") is made and entered into this 22 day of May, 2002, by and between Fleming Companies, Inc., an Oklahoma corporation ("Fleming"), with its principal offices at 1945 Lakepointe Drive, Lewisville, Texas 75057, and Consumers Cooperative Association of Eau Claire ("CCA") with its convenience store division doing business as Mega Marts ("Mega Marts"), a Wisconsin cooperative with its principal offices at 1201 South Hasting Way, Eau Claire, Wisconsin 54702, with regard to the following:

WHEREAS:

- (i) Fleming is engaged in business as a full-line wholesale supplier of food, grocery and related products to the retail trade;
- (ii) Mega Marts is engaged in, among other things the convenience store business as a retailer of food, grocery and related products and operates numerous stores located in the Eau Claire, Wisconsin area (the "Mega Mart Stores");
- (iii) CCA presently subleases from Fleming the premises located at 1201 South Hastings Way, Eau Claire, Wisconsin ("Subleased Premises") and CCA wishes to terminate the sublease and related instruments subject to the terms and conditions of this Agreement; and
- (iv) Fleming is willing to terminate the sublease and related instruments subject to CCA's strict compliance with all terms and conditions contained herein and in the Termination of Lease and Sublease referenced herein; and
- (v) CCA desires to benefit in services, predictability of supplies and pricing from a long-term supply agreement with Fleming at its Mega Mart Stores.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants set forth below, the parties agree as follows:

1. [Intentionally deleted.]
2. Supply. Throughout the term of this Agreement, CCA shall honor and satisfy a minimum annual purchase commitment ("MAPC") of at least \$3,100,000 in net purchases (net of returns and chargebacks) of cigarettes/tobacco ("Tobacco Products") and all other products ("AOP"), and at least \$700,000 in net purchases each and every quarter, from Fleming (collectively, "the Products") at its Mega Mart Stores. The MAPC shall be the total net purchases from all Mega Mart Stores. The parties anticipate CCA's purchases of Tobacco Products to approximate 74.5% of the total Products purchased (yet CCA's purchases of Tobacco Products shall be required to be at least

70% of the total Products purchased) and purchases of AOP to approximate 25.5% of the total Products purchased, upon which assumption certain incentives shall be made available to CCA if successful in achieving such targets.

Fleming shall initially supply ten (10) stores ("Subject Stores") operated by CCA as identified in Exhibit A appended hereto and by reference incorporated herein, and such additional convenience stores as the parties may agree in writing to include under this Agreement.

3. Preferred Supplier Status. Throughout the term of this Agreement, CCA shall recognize, designate and endorse Fleming as its preferred supplier of all non-Direct Store Delivery products (Tobacco Products and AOP) for all Subject Stores. CCA shall use its best efforts to promote Fleming as its preferred supplier to the Subject Stores and such other additional convenience stores that CCA may operate, and to encourage all such stores to purchase and to increase such purchases at least three percent (3%) each year after the first year of this Agreement.

4. Term. The initial term of this Agreement shall be five (5) years, commencing May 1, 2002 and expiring April 30, 2007; provided however, that either party may terminate this Agreement without cause upon at least ninety (90) days' advance written notice to the other party. Either party may terminate this Agreement due to the other party's material breach and failure to cure same within the required time prescribed herein. In such events, the parties shall complete their respective payment and performance obligations owed, accrued and outstanding at time of termination.

5. Pricing of Tobacco Products. Cigarettes and other tobacco products shall be invoiced, per the applicable tax jurisdiction, in accordance with Wisconsin law, Fleming's Cigarette Sell Plan (appended hereto as Exhibit B and by reference incorporated herein), and competitive market pricing.

All cigarettes sold by Fleming to CCA in the state of Wisconsin shall be net priced and reflect the Wisconsin multi-store discount of 2.9% (equal to the 3% multi-store discount).

Cigarette and Tobacco Product prices shall be subject to change due to changes in, among other things, changes in manufacturer prices, regulatory requirements and market fluctuations. In such instances, Fleming shall provide advance notice of such changes to CCA as reasonably practicable.

In the event of a cigarette manufacturer price increase, Fleming shall use its best efforts to price protect the Subject Stores for a one-week average weekly movement subject to Fleming's receipt of sufficient manufacturer(s) support of Fleming at wholesale.

6. Pricing of AOP. Fleming shall sell AOP to CCA for resale in the Subject Stores in accordance with Fleming's Marshfield Division's current Sell Plan, which is appended hereto as Exhibit C and by reference incorporated herein.

7. Other Terms of Sale. CCA agrees to pay to Fleming fuel adjustment charges pursuant to terms heretofore reviewed with CCA and any adjustments in freight which may vary from time to time during the term of this Agreement. Under no circumstances will these additional charges by Fleming be higher than those charged to similarly situated customers in similar geographic areas.

8. Payment. CCA shall remit payment to Fleming by Electronic Funds Transfer (EFT) with a 0.2% incentive discount off total invoice or statement. Payment shall be required weekly as invoiced for total purchases of all Subject Stores with a Fleming EFT transfer initiated on the Tuesday date for the previous total week's purchases of all Subject Stores, time being of the essence. Any monies owed CCA by Fleming will be withheld if CCA is out of terms. Any refunds or credits owed to CCA shall be made to CCA at the time that its account with Fleming is current.

9. Service Levels. Fleming agrees that, absent the occurrence of "a condition beyond Fleming's control", as hereinafter defined, it will use its best efforts to obtain and maintain at any time an average service level of at least 97% for the immediate past 52-week period during the term of this Agreement. The average service level will be determined by comparing the gross dollar purchases of Products shipped to all Mega Mart Stores to the gross dollar purchases of Products ordered by all Mega Mart Stores. The term "a condition beyond Fleming's control" means a situation existing which is not within the control of Fleming relating to the acquisition or distribution of Products. Examples include, but are not limited to: labor strikes, government rationing or other regulations, fire, flood, fuel shortages, computer malfunction or failure, equipment failure, earthquake, acts of God, drought or other weather conditions. In the event Fleming fails to attain the average service level of at least 97% for the immediate past 52-week period, Fleming will have a period of 12 weeks after written notice by CCA to Fleming of such deficiency in service level, to attain an average service level of at least 97% before being deemed in default hereunder.

10. Default.

(a) Default by CCA. In the event CCA fails to perform any of its non-monetary obligations hereunder in any material respect and fails to cure same within thirty (30) days' following receipt of written notice thereof from Fleming, then CCA shall be in default and Fleming shall have the right to immediately terminate this Agreement by written notice ("Notice of Termination") and pursue all other remedies available by reason of such default, including specific enforcement of the obligations of CCA and those remedies specified in Section 14 hereof. In the event of a monetary default, CCA shall have a period of five (5) days from receipt of written notice thereof from Fleming within which to cure such monetary default; otherwise Fleming may immediately terminate this Agreement by written notice. In the event of such monetary default by

CCA, Fleming's remedy with respect to monetary damages shall be limited solely to direct damages, if any, suffered by Fleming and those remedies specified in Section 14 hereof. In no event whatsoever shall CCA 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.

(b) Default by Fleming. In the event Fleming fails to perform any of its obligations hereunder in any material respect, and fails to cure same within thirty (30) days' written notice thereof, then Fleming shall be in default and CCA shall have the right to immediately terminate this Agreement by written notice ("Notice of Termination") and pursue all other remedies available by reason of such default, including specific enforcement of the obligations of Fleming; provided, however, that in the event of a monetary default, Fleming shall have a period of five (5) days from receipt of written notice thereof from CCA within which to cure such monetary default; otherwise CCA may immediately terminate this Agreement by written notice. In the event of such default by Fleming, CCAs' remedy with respect to monetary damages shall be limited solely to direct damages, if any, suffered by CCA. In no event whatsoever shall Fleming be liable to CCA for, and CCA 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.

11. Disputes; Arbitration. The parties hereto agree that all disputes between them relating to this Agreement are to be resolved by arbitration as provided herein. This agreement to arbitrate shall survive the rescission or termination of this Agreement. All arbitration shall be conducted in Milwaukee, Wisconsin pursuant to the Commercial Arbitration Rules of the American Arbitration Association except as herein may be provided. 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, where applicable, and the decision of the arbitrators will be enforceable in any court of competent jurisdiction.

In any dispute where a party seeks \$50,000 or more in damages, three arbitrators will be employed. 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. In resolving all disputes between the parties, the arbitrators will apply the law of the State of Wisconsin, 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. 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. All parties agree that the arbitrators and any counsel of record to the proceeding will have the power of subpoena process as provided by law.

From related transactions in connection with this Agreement, the parties may be in a debtor/creditor relationship, which may include the granting of security interests in goods and/or fixtures, or in a relationship as lessor and lessee. The parties recognize that these kinds of relationships could give rise to the need by one or more of the parties for emergency judicial relief to regain possession of goods and/or fixtures, to prevent the sale or transfer of goods and/or fixtures, to protect real or personal property from injury or to obtain possession of real estate. The parties agree that either shall be entitled to pursue such remedies for emergency or preliminary injunctive relief in any court of competent jurisdiction, provided that each party agrees that it 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 immediately following the issuance of any such emergency or injunctive relief.

12. Notices. All communications required or permitted under this Agreement will be in writing, and sent to the following addresses or to such other address requested by the parties by notice as herein provided:

(a) Notices to Fleming:

Fleming Companies, Inc.
P.O. Box 490
Marshfield, WI 54449

Attention: Division President

(b) With copy to:

Fleming Companies, Inc.
1945 Lakepointe Drive
Lewisville, TX 75057

Attention: Legal Department

(c) Notices to CCA:

Consumers Cooperative Association of Eau Claire
1201 South Hastings Way
Eau Claire, WI 54702

Attention: General Manager

13. Purchase of Store Supplies. Upon the termination of this Agreement, CCA will purchase from Fleming all store supplies which Fleming has purchased or obtained as supplies for CCA and which, because of any special design, label, logo, quantity or other feature cannot be sold promptly by Fleming to other retailers being served by Fleming's distribution center which serviced the Mega Marts Stores during the term of this Agreement at the same price being paid for such supplies by CCA. CCA will pay to Fleming the then current price for such supplies being charged by Fleming to CCA. Such amount will be paid and such supplies will be delivered by Fleming to CCA within ten (10) days after termination of this Agreement.

14. Release of Property Interests. Upon execution of this Agreement by Fleming and CCA, Fleming shall take all actions and complete all documentation required to satisfactorily release the interest of Gateway Foods, Inc., Fleming, and any other assignee or successor of Gateway Foods, Inc. in any and all existing and operative lease agreements, sublease agreements, collateral assignments of sublease and related security interests granted by, to or involving Mega Management Corporation and/or Consumers Cooperative Association of Eau Claire with respect to the Subleased Premises, provided however, that such release shall be void and rendered a nullity in the event of CCA's termination of this Agreement without cause, or Fleming's termination of this Agreement with cause, in further accordance with the terms and conditions of Termination of Lease and Sublease executed by and among the parties appended hereto as Exhibit D and incorporated by reference herein.

15. Electronic Interface.

- (a) Fleming will support interface of electronic invoice.
- (b) Fleming will support interface for electronic price book (Fleming quoted sell price/items and all other price book attributes).
- (c) Fleming custom category sorting shall be accommodated.
- (d) Fleming shall provide, if needed, VISIONET, (web based access to CCA data) as well as a central office P.C. system to support central price book changes in cost,

retail, UPC, pack, size and description. The Account Manager shall be responsible for retail pricing adjustments or product changes and utilize VISIONET to make electronic changes daily.

Fleming will support the above, at no cost to CCA, regardless of interface being direct with Fleming or with AIG Via Link through the Internet. Fleming further recognizes CCA may expand technology and is committed to supporting or providing better P.O.S. or central enhancements as reasonably practical. *Note: The CMI system will be online within the next few weeks with potential costs to CCA involved.*

16. Ordering System.

(a) Fleming will provide electronic (Telxon Brand Equipment) hand-held order entry equipment for each location, at no charge.

(b) P.C. direct order is also available with no charge to CCA for software required to support order processing.

(c) All orders must be received by 9:00 A.M. CST the day prior to delivery, except a Friday order for Monday delivery.

(d) All orders are placed on Fleming 800 data lines to Fleming distribution centers.

(e) CCAs' specific Order Guides shall be made available every eight (8) weeks.

17. Delivery System, assumes one (1) delivery per week.

(a) The Fleming driver will perform a wheel-in delivery service, by location, on grocery and tobacco products. Refrigerated and frozen product will be wheeled-in to the walk-in cooler or appropriate other facility. Driver will verify cigarettes and tote count. *Note: All products guaranteed sellable at time of delivery.*

(b) CCAs' management shall have 48 hours from delivery to contact Fleming's customer service department and advise of any problems related to product delivered. Thereafter, all goods received shall be considered by Fleming to have been delivered in acceptable condition and as invoiced. Communication to be made through the Fleming Customer Service Department utilizing the Fleming "800" phone number and confirmed in writing by CCA.

(c) Routing issues to be addressed separately based upon store needs, and proximity of locations.

(d) Regularly scheduled deliveries will be next working day (except Friday orders for Monday) based on CCAs' management allowing Fleming an extended delivery window. Fleming deliveries will be on a predetermined delivery schedule.

18. Marketing/Manufacturer Programs

(a) Off-invoice manufacturer retail allowances shall be passed on within the minimum timeframes established by the manufacturer (per Marshfield Distribution Center).

(b) CCA shall have the buying advantage of two large, vendor sponsored, trade shows per year, as well as twelve monthly Fleming-sponsored promotional/ seasonal offerings.

(c) CCA shall also participate in the Fleming-sponsored A.M.S. (Accrual Management System) of over 100 vendor programs paid quarterly. *Note: A.M.S. funding is based upon actual Mega Marts purchases of selected items by vendor in the all other goods (AOG) category.*

(d) Fleming shall provide group-training programs intended to develop store management and key personnel. Fleming shall also maintain an extensive library of video training resources intended for chain account use.

19. Freshness Assurance

(a) Fleming's Freshness Assurance program provides a venue for retailers to eliminate "non-salable" merchandise (shelf stock). This manufacturer-based program supports the majority of cigarette, tobacco, HBC/GM, grocery, candy, and snacks products. The Freshness Assurance program outline is available with specific details regarding products and credit procedure. Fleming anticipates that more than 90% of product sales to retailers are authorized for freshness credits.

20. Retail Support Services

(a) Fleming shall assign an Account Manager to CCA, who will work with CCA at management level in support of CCAs' sales and profit goals. The Account Manager will support category management initiatives globally or regionally as designed by Mega Marts' needs in supporting merchandising and product management.

(b) Fleming will also assign a Sales/Service Representatives (SSR) to maintain retail call frequency of once a month for each Subject Store. The Sales/Service Representatives primary role will be support of account category management, store merchandising, credit writing and product return and other related sales/service functions.

21. Fee/Freight Schedule

(a) In accordance with the MAPC set forth in Section 2 above, no fees shall be charged to CCA for one delivery per week per Subject Store.

(b) Fuel surcharge will be active and float with the market when Fleming purchases mixed grade diesel over \$1.00 per gallon. The fuel surcharge will appear as a separate line item at the bottom of each invoice.

22. Incentive Plan

(a) In the event that CCA in fact achieves the annual targeted purchase volumes and percentages of Product purchases (over and above the required minimums) set forth in this Agreement, Fleming shall make quarterly payments to CCA retroactively in the amount of \$6,250 for each of those four preceding quarters in which the annual targets were satisfied.

(b) For each \$100,000 in annualized new Fleming purchases beyond the established base line of \$3,100,000 by the CCA, Fleming will pay retroactively an additional \$800 per year once the volume has cycled one calendar year to be paid quarterly as set forth above.

23. M.I.S. Reports

Fleming will provide CCA with Management Information Reports necessary to operate and analyze its business. These can be standard reports or customized I.S. reports such as:

- (a) 13-Week Movement Analysis by Store by Item
- (b) Missed Opportunity Item Report
- (c) Four-Week Cigarette Tax Report
- (d) A.M.S. Vendor Purchase Recap
- (e) Store/Chain History Reports

24. Food Service

Fleming will support specific Food Service Requirements desired by Mega Marts.

- (a) Fleming will provide movement analysis and product movement information.
- (b) CCA will have opportunity to test market Fleming Food Service concepts.
- (c) If Fleming and CCA mutually desire to expand Food Service, Fleming will provide any vendor-supported incentives to strengthen and grow the Food Service product category.

25. Miscellaneous Services/Requirements

(a) Totes are handled on a credit/debit system at a rate of \$13.00 per tote. Reconciliation shall be weekly as reflected on the billing statement.

(b) Fleming's applicable Policies and Procedures are documented and will be reviewed at future meetings with CCAs' Subject Stores supervisor personnel, who shall be required to comply with such policies and procedures.

(c) Fleming will provide one (1) complete set of tags at no charge to CCA for each Subject Store per year over the term of this Agreement.

26. Additional Provisions.

(a) Board Authorization. CCA will execute and deliver any and all documents which may reasonably be requested by Fleming in order to properly document this Agreement, including, but not limited to, certified resolutions of the Board of Directors of CCA authorizing the undersigned officer to enter into this Agreement.

(b) Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their respective successors and assigns. Provided, however, that neither this Agreement nor the rights and obligations of CCA hereunder shall be assignable by CCA, and any purported assignment in contravention hereof shall be void without the consent of Fleming.

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

(d) Entire Agreement. This Agreement, together with the exhibits hereto, embodies the entire understanding of the parties hereto in relation to the purchase of Products by CCA from Fleming and supersedes any other agreement between the parties to the extent the latter covers the same subject matter. There are no representations, promises, warranties, understandings or agreements, express or implied, oral or otherwise, in relation thereto, except expressly referred to or set forth herein. CCA acknowledges that the execution and delivery of this Agreement is its free and voluntary act and deed and that said execution and delivery have not been induced by, nor done in reliance upon, any representations, promises, warranties, understandings or agreements made by Fleming, or its agents, officers, employees or representatives. No promise, representation, warranty or agreement made subsequent to the execution and delivery hereof by either party hereto, 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 the same be in writing and signed by the parties hereto.

(e) Headings. Headings or captions of the paragraphs 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 of any paragraph hereof.

(f) Inconsistency with Selling Plan. In the event any of the terms and conditions of this Agreement are inconsistent with the terms and conditions of the Selling Plan, the terms and conditions of this Agreement will govern and prevail.

(g) Partial Invalidity. In the event that any of the provisions or portions thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or portions hereof will not be affected thereby.

(h) No Effect. The length of the term of this Agreement may not correspond with the terms of other agreements between the parties and nothing shall be implied therefrom. Furthermore, except as set forth in Section 14 hereof, 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 the parties will be extended or renewed.

(i) Limitation of Actions. An action for breach of this Agreement must be commenced within two 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.

(j) Attorneys' Fees and Costs. In the event suit is brought to enforce any of the terms of this Agreement, the losing party will pay to the prevailing party its reasonable attorneys' fees and costs incurred in any such proceeding.

(k) Amendment or Waiver. This Agreement will not be amended, nor will any of its terms be deemed to have been waived by either party, unless such amendment or waiver is in writing and signed by the parties hereto.

(l) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Wisconsin.

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

(n) Time is of the Essence. The parties agree that time is of the essence in performing under this Agreement.

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

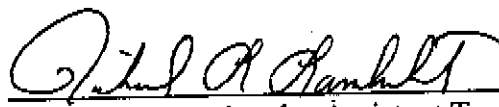
FLEMING COMPANIES, INC.

By: _____



CONSUMERS COOPERATIVE
ASSOCIATION OF EAU CLAIRE

By: _____



Richard L. Lambrecht, Assistant Treasurer