

Exhibit “D”

to

The Produce Exchange, Inc.’s

Declaration



1945 Lakepointe Drive
P O. Box 299013
Lewisville, TX 75029

Daniel A McDaniel
Nomellini Grilli & McDaniel
235 E Weber Ave
PO Box 1461
STOCKTON, CA 95201-1461

Re: Fleming Companies, Inc., et al. Bankruptcy Case No. 03-10945; Letter Agreement regarding reconciliation of PACA claim asserted by **Produce Exchange Inc**

Dear Valued Supplier:

Fleming Companies, Inc. and certain of its subsidiaries¹ (the "Debtors") filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on April 1, 2003 (the "Petition Date"). Prior to the Petition Date the Debtors purchased agricultural goods from you, many of which may qualify for treatment under the Perishable Agriculture and Commodities Act ("PACA").

The Bankruptcy Court has entered the PACA Order² in these cases to govern a process for the Debtors to review, object to if necessary and pay PACA claims. Because of difficulties inherent in the reconciliation process, the reconciliation of PACA Claims in these cases is labor intensive and time consuming. In order to provide a mechanism for payment to vendors such as yourself earlier than would likely be the case under the PACA Order, the Debtors have

¹ 03-10944 - Core-Mark International, Inc.; 03-10945 - Fleming Companies, Inc.; 03-10946 - ABCO Food Group, Inc.; 03-10947 - ABCO Markets, Inc.; 03-10948 - ABCO Realty, Corp.; 03-10949 - ASI Office Automation, Inc.; 03-10950 - Core-Mark Mid-Continent, Inc.; 03-10951 - Core-Mark Interrelated Companies, Inc.; 03-10952 - C/M Products, Inc.; 03-10953 - FAVAR Concepts, Ltd.; 03-10954 - Fleming Foods Management Co., L.L.C.; 03-10955 - Fleming Foods at Texas, LP; 03-10956 - Fleming International, Ltd.; 03-10957 - Fleming Transportation Service, Inc.; 03-10958 - Fleming Supermarkets of Florida, Inc.; 03-10959 - Food 4 Less Beverage Company, Inc.; 03-10960 - FuelServ, Inc.; 03-10961 - General Acceptance Corporation; 03-10962 - Marquise Ventures Company, Inc.; 03-10963 - Head Distributing Company; 03-10964 - Minter-Weisman Co.; 03-10965 - Piggly Wiggly Company; 03-10966 - Progressive Realty, Inc.; 03-10967 - Rainbow Food Group, Inc.; 03-10968 - Retail Investments, Inc.; 03-10970 - Retail Supermarkets, Inc.; 03-10971 - RFS Marketing Services, Inc.; 03-10972 - Richmar Foods, Inc.; and, 03-10973 - Dunigan Fuels, Inc.

² The Order Requiring Segregation of Funds to Cover Certain PACA Claims and Authorizing Procedure for Reconciliation and Payment of Valid Claims Under the Perishable Agricultural Commodities Act and the Packers and Stockyard Act.

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negotiated and obtained the necessary consent from their lending banks as well as the Official Committee of Unsecured Creditors to enter an agreement (the "Letter Agreement") on the terms proposed below. The intent of this Letter Agreement is to allow the Debtors to pay vendors on an expedited basis, to obtain the information necessary to reconcile disputed portions of claims on an expedited basis and, if appropriate, to make payment on such contested amounts once reconciled. This Letter Agreement is also intended to save both parties the time and expense of potential litigation as well as to preserve the Debtors' liquidity as they work to stabilize their business - the stabilization of which will inure to the benefit of all creditors including the Debtors' PACA vendors.

Therefore, the Debtors and **Produce Exchange Inc** ("Vendor") agree as follows:

- (i) Vendor has filed PACA Claim No. **r3155** ("Claim No. **r3155**") in the amount of **\$1,784,106.56** (the "Asserted Claim Amount") in these cases.
- (ii) Following a review of Claim No. **r3155** and pursuant to their claim reconciliation protocol, the Debtors are prepared to make an expedited, preliminary payment to Vendor in the amount of **\$1,335,964.27** at this time (the "Estimated PACA Payment"). The Debtors agree to pay the Estimated PACA Payment to Vendor within 3 calendar days of Vendor signing and returning this Letter Agreement to the Debtors.³ The Debtors reserve their right, following further reconciliation efforts, to assert that the Estimated Payment was in excess of the valid PACA Claim of Vendor (an "Overpayment") and that the Overpayment must be returned by the Vendor to the Debtors. The Debtors may setoff any Overpayment against either (a) amounts due Vendor after further reconciliation of any Unreconciled Claim Portion (as defined in paragraph (iii) below) or (b) against post-petition invoices owed by the Debtors to Vendor. The Debtors will provide detail of any asserted Overpayment to Vendor and will provide notice in advance of any offset. Any dispute with respect to the amount or existence of an Overpayment shall be resolved by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").
- (iii) The difference between the Asserted Claim Amount (as defined in paragraph (i) above) and the Estimated PACA Payment (as defined in paragraph (ii) above) is the unreconciled portion of Vendor's PACA Claim (the "Unreconciled Claim Portion").
 - (A) In the course of their review of the Unreconciled Claim Portion, the Debtors have identified **\$388,481.85** of invoices and other

³ The Debtors will accept fax signatures to 312-660-0168.

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amounts (which invoices and amounts are listed on Exhibit A attached hereto) for which additional information including copies of invoices and proof of delivery is required (the "Additional Detail") before a final reconciliation can be completed.

- (B) Vendor agrees, to the extent not already provided, to provide the Additional Detail to the Debtors within 7 calendar days of receipt of this Letter Agreement.
- (C) The Debtors agree that, on or before August 16, 2003, the date of the Second Supplemental PACA Report, as defined in the PACA Order (the "Reconciliation Period"), the Debtors will complete their reconciliation of Claim No. r3155 including, to the extent the Additional Detail has been timely provided, their reconciliation of the Unreconciled Claim Portion. Any payments due by the Debtors to Vendor following reconciliation of the Unreconciled Claim Portion shall be made in accordance with the PACA Order.⁴
- (iv) In the event that, at the time for filing the Second Supplemental PACA Report, the Debtors do not believe that all or a portion of Claim No. r3155 represents a valid PACA claim, the Debtors shall list such amount (the "Contested Claim") on such Supplemental PACA Report and such Contested Claim shall be governed by the PACA Order.
- (v) During the Reconciliation Period, Vendor agrees (a) to refrain from taking any legal action to enforce Claim No. r3155, and (b) to establish "Customary Trade Terms" which were available to each of the Debtors' operations. "Customary Trade Terms" shall mean normal and customary trade terms, practices and programs (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, coupon reimbursement, normal product mix and availability, volume/quantity of product provided and other applicable terms and programs, and specifically excluding promotional dating of payment terms) which were available to each of the Debtors' operations individually on a historical basis in the one-hundred eighty (180) days prior to the Petition Date or such other trade terms as agreed by the Debtors and Vendor, subject to the consent to any such other trade terms of the agents appointed pursuant to the DIP Credit Agreement and with notice of such other trade terms to the court-appointed advisors of the Official Committee of Unsecured Creditors, which information shall be

⁴ The PACA Order provides for the Debtors to file a Supplemental PACA Report on July 16, 2003 and August 16, 2003.

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kept confidential and shall not be shared by such advisors with Committee members, and, in addition, any normal customary promotional practices (including, but not limited to, growth incentive programs, preferred vendor programs, ad-allowance programs, and bill backs) which were in place prior to the Petition Date; it being understood that in no event will any amount of trade credit you provided prior to the Petition Date be deemed to satisfy any portion of your obligation to provide Customary Trade Terms on and after the Petition Date.

- (vi) The Company and Vendor agree that any dispute with respect to this Letter Agreement shall be determined by the Bankruptcy Court.

If you have any questions about this agreement please do not hesitate to contact the Fleming PACA reconciliation team at (972) 535-7149 or via e-mail at cms@fleming.com.

Sincerely,

/s/ Harry Morford

Harry Morford
Vice President of Produce Operations
Fleming Companies, Inc.

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Agreed and Accepted by:
Produce Exchange Inc

By: _____
Its: _____

The Debtors

By: _____
Its: _____

Dated _____, 2003