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U.S. BANKRUPTCY COURT  
DISTRICT OF DELAWARE  
CASE NO. 03-10945  
MFW  
HEARING DATE: 10/02/03  
OBJECTION DEADLINE: 09/25/03

5 Richard Lustiger #007623  
6 Attorneys for Creditor MESA COLD STORAGE, INC.

7  
8 **IN THE UNITED STATES BANKRUPTCY COURT**  
9 **FOR THE DISTRICT OF DELAWARE**

11 In re: 12 13 Fleming Companies, Inc., et al., 14 Debtors.	11 <b>Chapter 11</b> 12 13 <b>Case No. 03-10945 (MFW)</b> 14 <b>(Jointly Administered)</b> 15 <b>Hearing Date: 10/02/03 at 2:00 pm</b> 16 <b>Objection Deadline: 09/25/03</b> 17
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19 **OBJECTION TO DEBTORS' SECOND MOTION FOR ORDER**  
20 **PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY CODE**  
21 **AUTHORIZING THE DEBTORS TO REJECT CERTAIN UNEXPIRED**  
22 **LEASES OF NONRESIDENTIAL REAL PROPERTY IN CONNECTION**  
23 **WITH SALE ORDER**

23 Creditor Mesa Cold Storage, Ltd. ("Mesa") hereby makes its objections to the  
24 above-captioned motion. Mesa is listed on Exhibit A to the motion as having a  
25 warehousing agreement with the Debtors that Debtors seek to reject in this motion.  
26

27 ...  
28

1                                   **DEBTORS HAVE FAILED TO KEEP PAYMENTS**  
2                                   **ON THIS AGREEMENT CURRENT AS THEY HAVE**  
3                                   **REPRESENTED TO THE COURT AS THE BASIS**  
4                                   **FOR THE PROPOSED REJECTION DATE**

5                   In its motion at paragraph 16, page 6, the Debtors state that they are entitled to a  
6                   September 30, 2003 effective date of rejection "as to all locations listed in attached  
7                   Exhibit A because **the Debtors are current on their obligations** pursuant to Section  
8                   365(d)(3) of the Bankruptcy Code . . . ." (Emphasis added.) To the extent this is their  
9                   assertion, however, Mesa points out that **the Debtors are not current** on their  
10                  obligations under this warehousing agreement. Instead, the Debtors owe Mesa \$30,000  
11                  for the last half of July 2003, which is past due, \$60,000 for August 2003, which is also  
12                  past due, and \$60,000 for September 2003, which is currently due, for a total of  
13                  \$150,000. Because this amount is unpaid and payments are delinquent, the basis for  
14                  Debtors' stated entitlement to a September 30, 2003 effective date of rejection has not  
15                  been established. Based upon Debtors' stated reasoning, this account needs to be brought  
16                  current before Debtors can make their rejection effective.

17                                   **MESA OBJECTS TO ANY CHARACTERIZATION**  
18                                   **OF THE WAREHOUSING AGREEMENT AS A**  
19                                   **NON-RESIDENTIAL REAL PROPERTY LEASE**

20                   By Mesa's inclusion in this motion, it appears Debtors assert that the warehousing  
21                   agreement constitutes a non-residential real property lease. Mesa objects to this  
22                   assertion. Attached hereto as Exhibit 1 is a copy of the Refrigerated Warehousing  
23                   Agreement. As can be readily seen, this agreement provides the Debtors with an  
24                   entitlement to refrigerated warehousing storage services, and not a fee or leasehold  
25                   interest in any particular parcel of real property. Accordingly, Mesa objects to any such  
26                   characterization in the motion and in the proposed form of order.  
27                   . . . .

**LIEBERMAN, DODGE, GERDING & ANDERSON, LTD.**  
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602 277 3000

1 RESPECTFULLY SUBMITTED this 24th day of September, 2003.  
2

3 LIEBERMAN, DODGE, GERDING  
4 & ANDERSON, LTD.

5  
6 BY: *Richard Lustiger*  
7 RICHARD LUSTIGER

8 Phoenix Corporate Center, Suite 1800  
9 3003 North Central Avenue  
10 Phoenix, Arizona 85012-2909  
11 Attorneys for Mesa Cold Storage, Inc.

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602 277 3000

CERTIFICATE OF SERVICE

Pursuant to Fed.R.Civ.P. 5(b), I certify that on the 24th day of September, 2003, I personally caused to be served by Federal Express overnight delivery, a true and correct copy of "Objection To Debtors' Second Motion For Order Pursuant To Section 365(A) Of The Bankruptcy Code Authorizing The Debtors To Reject Certain Unexpired Leases Of Nonresidential Real Property In Connection With Sale Order" addressed to:

Richard Wynne, Esq.  
KIRKLAND & ELLIS LLP  
777 South Figueroa Street  
Los Angeles, California 90017

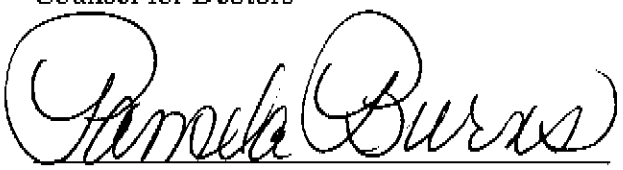
And  
Laura Davis Jones, Esq.  
PACHULSKI, STANG, ZIEHL, YOUNG  
JONES & WEINTRAUB, P.C.  
919 North Market Street, 16th Floor  
Wilmington, Delaware 19801

And  
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And  
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Wilmington, Delaware 19801  
Counsel for Senior Secured Lenders

Joseph McMahon, Esq.  
Office of the U.S. Trustee  
844 King Street, Room 2313  
Wilmington, Delaware 19801

  
PAMELA BURNS

## REFRIGERATED WAREHOUSING AGREEMENT

THIS AGREEMENT is made and entered into as of March 14, 2002, by and between MESA COLD STORAGE, LTD., an Arizona corporation ("Distributor"), and FLEMING COMPANIES, INC., an Oklahoma corporation ("Customer").

WHEREAS, Distributor operates a warehouse located at 9602 W. Buckeye, Phoenix, Arizona (hereinafter referred to as the "Warehouse");

WHEREAS, Customer is a wholesale distributor of frozen food products ("Products"); and

WHEREAS, Distributor desires to provide the necessary receiving, unloading, storage, order selection, staging, and loading services to meet the needs of Customer.

NOW, THEREFORE, for and in consideration of the mutual undertaking of the parties set forth herein, the parties mutually agree as follows:

### ARTICLE I TERM

The term of this Agreement shall commence on March 15, 2002 ("Commencement Date") and shall expire at 11:59 p.m. on March 14, 2005 ("Expiration Date"); provided, however, that Customer shall have the option to renew this Agreement for three additional one-year terms by notifying Distributor in writing at least ninety (90) days before the expiration of the term then in effect.

### ARTICLE II STORAGE

2.1 The amount of Product to be stored at the Warehouse will require approximately 5000 pallet positions. Customer shall make Distributor aware of significant increases/decreases in volume prior to product arrival.

2.2 Distributor shall maintain and operate the Warehouse in accordance with the operating guidelines set forth in Schedule 2.2, which is attached hereto and incorporated herein by reference, and all applicable law, regulations, codes, and ordinances. In the event of a conflict between the terms of this Agreement and the terms of Schedule 2.2, the terms of this Agreement shall govern.

### ARTICLE III WAREHOUSING AND HANDLING SERVICES

3.1 Subject to the terms of this Agreement, Distributor agrees to provide and maintain all equipment, material, utilities, labor, supervision, facilities, and any and all other items necessary to do the following:

- (a) receive Product from trucks;
  - (b) unload and transfer the Product from trucks (i) into the Warehouse for storage or (ii) directly to trucks provided by Customer or its customers;
  - (c) inspect received Product;
  - (d) store Product at the Warehouse in accordance with the terms of this Agreement;
  - (e) select Product for orders submitted by Customer;
  - (f) stage Product pursuant to orders submitted by Customer;
- and
- (g) load orders of Product onto trucks for shipment to Customer or Customer's customers.

The foregoing are hereinafter collectively referred to as "Services." Distributor shall also perform Support Services for Customer. "Support Services" shall include, without limitation (i) maintenance of proper and adequate records relating to receipts, shipment, and inventory; (ii) acknowledgment of receipts (including Customer required receipt verification, shipment, and inventory); (iii) acknowledgment of receipts of Product on behalf of Customer on Inbound bills of lading; (iv) providing Customer with completed truck certificates and online computer inventory access; and (v) the preparation of any other necessary documents for outbound shipments (including case stickers for each outbound case).

In each case, the Warehouse receipts and other documentation related to Product will be issued to Customer or the Customer subsidiary or affiliate on whose behalf Product is being stored.

3.2 For Warehouse space and Services and Support Services rendered during the term of this Agreement, Customer shall pay Distributor in accordance with the terms of Schedule 3.2, which is attached hereto and incorporated herein by reference. In the event of a conflict between the terms of this Agreement and the terms of Schedule 3.2, the terms of this Agreement shall govern.

3.3 Distributor shall not subcontract the Services or Support Services to any third party without Customer's prior written consent.

#### ARTICLE IV RECORDS

Distributor shall maintain records relating to Product received, stored, and/or shipped in accordance with (a) the terms of this Agreement and the Schedules attached hereto, and (b) standard industry practice. Distributor shall make such reports to Customer with respect to receiving, transferring, or shipping Product as Customer

may reasonably request. All records and supporting data maintained by Distributor with regard to Customer's Product shall be available for inspection and reproduction by Customer at all reasonable times and upon reasonable notice.

#### ARTICLE V DAMAGE OR DESTRUCTION

In the event of any damage to or destruction of the Warehouse that would prevent Distributor from rendering the Services contemplated by this Agreement on the terms and conditions set forth herein, Customer may terminate this Agreement, effective on the date of such event, by giving written notice of such termination to Distributor. In the event of such termination, Customer shall not be liable for any storage or other charges incurred subsequent to the effective date of such termination.

#### ARTICLE VI INSURANCE

6.1 During the term of this Agreement, Distributor shall, at its own expense, carry the following insurance:

(a) warehouseman's legal liability insurance covering the Products against loss or damage arising from the negligence or willful misconduct of Distributor or its employees while the Products are in Distributor's care, custody, or control and with policy limits of not less than \$8,000,000 per occurrence;

(b) workers' compensation insurance with limits of not less than the applicable statutory requirements and protecting Customer from any and all workers compensation claims brought against Customer by employees of Distributor. This policy shall be endorsed to include employers' liability insurance for bodily injury by accident with limits of not less than \$1,000,000 (each accident), bodily injury by disease with limits of not less than \$1,000,000 (policy limit), and bodily injury by disease with limits of not less than \$1,000,000 (each employee).

(c) commercial general liability insurance in an amount of not less than \$1,000,000 per occurrence and subject to a general aggregate limit of not less than \$2,000,000 applicable to the Warehouse. This insurance shall include, without limitation, contractual liability and automobile liability with coverage for loading and unloading of autos, tractors, and trailers.

(d) umbrella liability insurance of \$1,000,000.

6.2 Distributor shall provide Fleming with certificates of insurance evidencing the existence and renewal of such insurance and providing that the insurance shall not be cancelled except upon 30 days prior written notice to Fleming. All such policies shall be issued by insurers licensed to do business in the State of Arizona and having an A.M. Best rating of A- VII or greater and otherwise reasonably acceptable to Fleming, shall name Fleming as an additional insured (except with respect to workers' compensation insurance and warehouseman's legal liability

insurance), and shall evidence waiver of subrogation by such insurers. Distributor may not satisfy the insurance requirements of this section through self-insurance. The amounts and coverage of the Insurance described above shall not limit Distributor's liability nor relieve Distributor of any other obligation under this Agreement.

#### ARTICLE VII DEFAULT & TERMINATION

7.1 If at any time Distributor fails to perform its obligations in strict accordance with terms of this Agreement, Distributor shall be in default and Customer may immediately obtain substitute services from any other available source. If Customer obtains substitute services, Customer shall not be deemed to have elected a remedy and Distributor shall remain liable for its nonperformance. If Distributor fails to cure any material default within 14 days after written notice, Customer may, in addition to all other remedies available under this Agreement or law, terminate this Agreement without further notice. Upon such termination, Distributor shall select, stage, and load all Product remaining in the Warehouse in accordance with Customer's instructions, which instructions Customer shall submit from time to time over not more than 30 days after Customer's termination of this Agreement.

7.2 If Customer fails to pay any amount when due or if Customer fails to perform any of its other obligations under this Agreement within 14 days after written notice from Distributor of such failure, then Customer shall be in default under this Agreement. Upon any material default by Customer, Distributor may immediately terminate this Agreement.

7.3 Upon any termination of this Agreement, Distributor shall have the right to payment for services provided under this Agreement through the date of termination.

#### ARTICLE VIII NOTICE

All notice for which provision is made herein shall be in writing and shall be delivered personally, sent by overnight courier, or sent by prepaid certified United States mail and addressed to the parties at the following addresses:

Mesa Cold Storage, LTD.  
146 S. Country Club Dr.  
Mesa, Arizona 85210-1251  
Attn: Sherry Perry, General Manager

Fleming Companies, Inc.  
Phoenix Division  
624 South 25th Avenue  
Phoenix, AZ 85009  
Attn: Division President



or to such other address as either party may hereafter designate in writing by notice to the other party. Notices shall be effective upon receipt.

ARTICLE IX  
DISTRIBUTOR'S REPRESENTATION AND WARRANTIES

9.1 Distributor hereby represents and warrants that the Warehouse complies with all applicable laws, rules, codes, ordinances, and regulations, is fit, water tight, free of contamination, free of rodents and insects, safe, properly ventilated to guard against fainting of the smell of the Product, and suitable for storing Product at the temperatures as required herein.

ARTICLE X  
MISCELLANEOUS PROVISIONS

10.1 Distributor is and shall be deemed an independent contractor engaged by Customer to perform Services and Support Services under this Agreement, and Distributor is not hereby authorized to act as an agent of Customer.

10.2 Distributor shall pay all taxes and comply with all laws and regulations relating to the ownership, maintenance, and use of the Warehouse. Any ad valorem tax assessed against the Product shall be paid by Customer.

10.3 Title to all Products handled by Distributor and all supplies furnished Distributor by Customer shall be and at all times remain in Customer. Distributor hereby waives and disclaims any lien, security interest, charge, claim, or other encumbrance, arising by statute or otherwise, in or to any Products.

10.4 The validity, operation, and performance of this Agreement shall be governed and controlled by the laws of the State of Arizona, notwithstanding its conflicts of law rules.

10.5 The terms, provisions, and conditions hereof shall extend to and be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns; provided, however, that Distributor shall not assign any of its rights, privileges, duties, or obligations hereunder, by operation of law or otherwise, without the prior written consent of Customer. Assignment in violation of this provision shall be void.

10.6 The failure of either party to enforce at any time any of the provisions of this Agreement or to exercise its rights under any of the provisions or to require at any time a certain performance of the other party of any of the provisions herein, shall in no way be construed to be a waiver of such provision, nor in any way affect the validity of this Agreement or any part thereof, or the right of either party thereafter to enforce each and every such provision.

10.7 The invalidity of any part, term, or provision of this Agreement shall not affect the validity of the remainder hereof.

10.8 The headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the provisions to which they appertain.

10.9 Schedules 2.2 and 3.2 are incorporated into this Agreement by reference.

10.10 This Agreement is the final expression of the entire agreement between Distributor and Customer regarding the services to be provided by Distributor, and there are no agreements, understandings, conditions, warranties, or representation, oral or written, express or implied, with reference to the subject matter hereof that are not merged herein. Except as otherwise specifically stated, no modification hereto shall be of any force or effect unless it is in writing and signed by Distributor and Customer.

10.11 All disputes between Distributor and Customer relating to this Agreement will be resolved by 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 Phoenix, Arizona, 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.

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, incidental, or indirect damages. Each party hereby waives the right to such damages and agrees to receive only those actual damages directly resulting from the claim asserted. 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 State of Arizona, 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.

10.12 Distributor shall allow Customer's representatives to enter the Warehouse at any reasonable time during normal business hours after reasonable prior notice so that Customer may review the inventory of Products and inventory records and generally inspect Distributor's performance under this Agreement. Distributor may require that Customer's representatives in the Warehouse be accompanied by a Distributor representative.

10.13 A party shall not be deemed in default of this Agreement if its non-performance is the result of a condition beyond its control, including, but not limited to, labor strikes and disturbances, government rationing or other regulations, flood, earthquake, acts of God, drought, and other weather conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate, each copy for all purposes to be deemed an original, as of the day and year first above written.

MESA COLD STORAGE LTD.

By: *Henry K. Leaf*

Title: *General Manager*

FLEMING COMPANIES, INC.

By: *William A. Morgan*

Title: *SR VP Logistics*

## SCHEDULE 2.2

### OPERATING GUIDELINES

#### A. Receiving Services

1. Scheduling of Inbound trucks will require 24 hours advance notice. The parties shall request that trucking companies that ship Product to the Warehouse make appointments to ship Products to the Warehouse in advance.
2. Appointments made by trucking companies less than twenty-four (24) hours in advance will be handled as expeditiously as possible as work in appointments and may be subject to overtime charges; provided, however, that returns of small case quantities of Product shall not be subject to overtime charges. Distributor will charge trucking companies for such overtime charges.
3. Distributor will notify Customer of any Inbound loads of Product that do not match the quantities on inbound Product noted on the shipping documents or Customer purchase orders, including, but not limited to, shorts, overages, temperature, and damages.

#### B. Warehousing Services

1. Distributor shall notify Customer of any damage to inbound Product. If such Product is accepted by Customer, Distributor shall mark such Product with a "D" lot number and store it in a segregated portion of the Warehouse designated for damaged Product. Distributor will note the damage on all copies of bills of lading from trucking companies. Unless Distributor objects to Customer in writing, the Inbound bills of lading shall be presumed to represent the true and accurate quantity of Product delivered by Customer to the Warehouse.
2. Distributor shall notify Customer as soon as it becomes aware of damaged Product
3. Distributor, at its sole cost and expense, shall keep the Warehouse in good order and repair and in such condition that all frozen Product handled hereunder shall remain at a Product temperature of 0 to -20 degrees Fahrenheit. Customer shall designate the proper storage temperature range for any loads of Product received by Distributor that fall outside this specification.
4. Customer's Product shall not be commingled on the same pallet with products belonging to Distributor or to any third party nor shall

Customer's Products be moved from the Warehouse for storage at another location without Customer's prior written consent. For the purpose of inspecting the Product, Customer shall have access to the Warehouse at all reasonable times and accompanied by a warehouse representative during the term of this Agreement or until all of Customer's Product has been removed, whichever shall occur later.

5. Distributor shall be responsible to Customer for the handling of Product hereunder and agrees to receive, handle, and store said Product in accordance with accepted industry practices, which includes proper and adequate records relating to food safety and worker safety, unless otherwise agreed herein. As Product arrives at the Warehouse, Distributor shall accommodate and otherwise handle the Product in accordance with Customer's instructions. Product shall be shipped out, delivered, or transferred only upon Distributor's receipt of written instructions from Customer. Customer may, through duly authorized personnel, instruct Distributor to release Product by electronic data interchange ("EDI"), Customer designated shipping documents or facsimile instructions.
6. Distributor shall operate Warehouse for providing the Services herein to Customer for Product receipt on a twenty-four hours per day, Sunday through Friday basis. Distributor shall operate the Warehouse during such hours as necessary to receive Products and load orders for outbound shipment in accordance with Customer's Master Order Schedule. Customer shall provide Distributor with sufficient advance notice of any will-call orders to enable Distributor to select Product for pick-up by Customer within two (2) hours after notice from Customer on the same day.
7. Distributor shall probe test (for temperature only) three (3) samples of Product per load on its receipt at the Warehouse. Distributor shall immediately notify Customer of any Product samples determined to be above +15 degrees Fahrenheit when so tested at the Warehouse.

C. Shipping Services

1. Customer will track all Product Inventory on its information systems. Distributor will also track Product Inventory for billing purposes. The parties shall balance the respected Inventories on a weekly cycle count basis.
2. Customer will release all Product for outbound shipments by Product code. Distributor will print pick tickets by oldest date code

first, unless specific lot numbers are requested by Customer in writing, by electronic editing during EDI transmission of orders or other designated shipping documents.

3. Customer shall provide Distributor with transmission of all pertinent data by 6:00 a.m. each day to have hard copies of the pick tickets for that days orders prior to the agreed upon ship times for the day shift.
4. Distributor shall use its own or Customer's pick tickets to pull orders and stage onto the dock for checking and loading by Distributor.
5. Distributor shall use Customer's item codes for all Products.
6. Customer shall provide Distributor with all dry ice required for outbound shipments of ice cream products.

## SCHEDULE 3.2

### RATES AND CHARGES

The charges to be paid by Customer to Distributor for the Services and Support Services performed under this Agreement shall be determined as follows:

- A. Handling/Storage/Order Picking For the first twelve (12) months of this Agreement, the charge for handling and order selection, including individual case stickers, shall be .31 per case of Product. The foregoing fee includes the storage charges for the first twenty-eight (28) days of Product storage in the Warehouse. After such twenty-eight (28) day period, Distributor shall charge Customer a reoccurring storage charge of .04 per case of Product that is stored in the Warehouse in each subsequent seven (7) day period or any portion thereof. After the initial twelve (12) month period, the charge for handling and order selection, including individual case stickers shall be increased by .05 per case of Product. After the initial twenty-four (24) months of this Agreement, the foregoing fees shall be subject to a review for increase based on the increases in the costs associated with Distributor's provision of the Services. In no event shall the amount of any increase exceed .05 per case. If Distributor and Customer are not able to agree on the specific change in fees for the third and subsequent 12-month periods during the term of this Agreement, either party may terminate this Agreement upon 30 days written notice. If the Agreement is so terminated before the end of the initial 36 months of the term, Distributor shall be entitled to reimbursement of the unamortized portion of the out of pocket start up costs it incurred in connection with this Agreement.
- B. Freezer Down Charges. The charges for freezing down product shall not exceed \$1.50 per/ CWT.
- C. Cross-Dock Handling. There will be a \$15.00 per pallet charge, which includes up to seven (7) days of storage.
- D. Inventory. Distributor shall take a full physical inventory of Customer's Product at \$35 per hour per warehouse representative. Weekly cycle counts will be performed at no additional charge.
- E. Billings and Payment. Distributor shall compute the handling and initial storage and initial freezing charges for each lot of Product as of the date such lot is received, the subsequent freezing and related handling charges as of the date transferred, and the (floor loaded truck and labor charges as of the date handled and/or incurred.) Distributor shall render billings to Customer for the

above charges and for any other storage charges every week. All such billings shall be paid by Customer within fourteen (14) days from the date of Customer's receipt of each such billing. Invoices paid after 30 days shall incur a 1% service charge.

- F. Rate Review. Distributor reserves the right for 180 days from the initial date of contract to analyze all aspects of Customer's required services and review the Distributor's incurred expenses to date. In the event there are any services currently being provided or additional services resulting in additional expense not anticipated in the original rate quote, Distributor may propose an increase to the original rate quote for approval by Customer. Furthermore throughout the term of the contract, any change in additional required services may be reviewed at that time for a rate increase.