

# **EXHIBIT E**

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


<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>Fleming Companies, Inc., et al.,</b>	)	<b>Case No. 03-10945 (MFW)</b>
	)	<b>(Jointly Administered)</b>
<b>Debtors.</b>	)	

**DECLARATION OF WALLY WHITE RE L & L FOOD CENTER, INC AND  
LEVANDOWSKI, LLC**

I, Wally White, being of lawful age, hereby declare as follows:

1. I am the Director of Retailer Finance and Credit for Fleming Companies, Inc. I have personal knowledge of the facts set forth in this Declaration.
2. Attached as Tab 1 is a true and correct copy of the Facility Standby Agreement (the "FSA") between Fleming Companies, Inc. and L & L Food Center, Inc. and Levandowski, LLC (collectively "Retailer"). Paragraph 5 of the FSA contains an Arbitration Agreement between the parties.
3. Attached as Tab 2 are true and correct copies of Fleming statements showing that Retailer owes Fleming \$340,496.02.
4. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 17<sup>th</sup> day of December 2003.

  
\_\_\_\_\_  
Wally White

# **EXHIBIT 1**

## FACILITY STANDBY AGREEMENT

THIS FACILITY STANDBY AGREEMENT (the "Agreement") is made as of July 15, 2001, by and between FLEMING COMPANIES, INC., an Oklahoma corporation ("Fleming"), and L & L FOOD CENTER, INC., a Michigan corporation, and LEVANDOWSKI, LLC, a Michigan limited liability company (collectively, "Retailer"), with reference to the following circumstances:

- (i) Fleming is a full-line wholesale supplier of food, grocery, and related products through its product supply center at Massillon, Ohio and other locations; and
- (ii) Retailer is a retailer of food, grocery, and related products and operates retail grocery stores at the locations listed on Exhibit "A" hereto; and
- (iii) Retailer contemplates acquiring and/or developing additional retail grocery stores from time to time during the term of this Agreement and desires that the additional stores be subject to this Agreement; and
- (iv) Retailer has requested that Fleming be prepared to supply to Retailer a certain amount of food, grocery, and related products, and to be able to do so Fleming will have to commit certain resources, including capital, employees, inventory, equipment, and facilities; and
- (v) Retailer acknowledges that but for Retailer's covenants and agreements in this Agreement, Fleming would not have agreed to commit its resources for the benefit of Retailer and entered into this Agreement.

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

1. Fleming's Commitment to Supply. Throughout the term of this Agreement, Fleming will maintain capital, employees, inventory, equipment, and facilities sufficient to supply Products to Retailer in quantities sufficient to allow Retailer to meet the Purchase Target described in Section 3 of this Agreement.
2. Price and Other Terms of Sale. Except as hereinafter provided, the Products sold to Retailer pursuant to this Agreement shall be priced, and other terms of sale shall be established, generally in accordance with the Fleming Flexmate Marketing Plan (Grocery, Frozen, Dairy, Bakery, Deli and Meat) dated June 8, 1998, and General Merchandise (May 19, 1999) which Retailer has reviewed and which is attached hereto as Exhibit B, as amended from time to time by Fleming in its discretion upon thirty (30) days notice (the "Selling Plan"). Although Fleming has the ability to amend the Selling Plan in any respect, any amendments will be applicable to all customers of Fleming who are situated similarly to Retailer in the area serviced by the Fleming product supply center or centers that service Retailer's business, including Massillon, Ohio and Ft. Wayne, Indiana, and who are purchasing Products pursuant to the Selling Plan.

3. Term. Unless terminated sooner in accordance with this Agreement, the term of this Agreement will commence on the date Fleming first ships Products to Retailer (the "Effective Date") and will extend until the earlier of (i) the date which is six (6) years following the Effective Date, or (ii) the date on which Retailer shall have purchased \$300,000,000 (the "Purchase Target") in Products from Fleming pursuant to this Agreement (the "Term").

4. Default.

(a) Default by Retailer. If Retailer fails to perform in any material respect any of its obligations under this Agreement, then Retailer shall be in default and Fleming shall have all rights and remedies available under law, including, without limitation, the right to immediately stop shipment of Products, the right to immediately terminate this Agreement by written notice, and the right of specific enforcement of the obligations of Retailer. All such remedies shall be cumulative, and the resort to one remedy shall not be deemed an election of remedies. However, in the event of a monetary default, Retailer shall have five days from receipt of the notice of termination from Fleming within which to cure the monetary default. Fleming shall not be obligated to ship any Products to Retailer during such five days. Fleming's remedy with respect to monetary damages shall be limited solely to direct damages, if any, suffered by Fleming. In no event whatsoever shall Retailer be liable to Fleming for, and Fleming waives, releases and covenants not to sue or make demand for any consequential damages, punitive damages (whether identified as exemplary damages or otherwise), or statutorily prescribed damages.

(b) Default by Fleming. If Fleming fails to perform in any material respect any of its obligations under this Agreement, then Fleming shall be in default and Retailer shall have the right to immediately terminate this Agreement by written notice and pursue all remedies available under this Agreement or law by reason of such default, including, without limitation, specific enforcement of the obligations of Fleming. All such remedies shall be cumulative, and the resort to one remedy shall not be deemed an election of remedies. However, in the event of a monetary default, Fleming shall have five days from receipt of the notice of termination from Retailer within which to cure the monetary default. Retailer's remedy with respect to monetary damages shall be limited solely to direct damages, if any, suffered by Retailer. In no event whatsoever shall Fleming be liable to Retailer for, and Retailer waives, releases and covenants not to sue or make demand for any consequential damages, punitive damages (whether identified as exemplary damages or otherwise), or statutorily prescribed damages.

5. Disputes; Arbitration. All disputes between Fleming and the Retailer, including any matter relating to this Agreement, shall be resolved by final binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"). Such arbitration proceedings shall be conducted in the State of Michigan. The arbitrators shall be selected from the panel of qualified arbitrators in Wayne, Oakland and Macomb Counties, Michigan, and, to the extent they are available, such arbitrators shall be selected from the AAA Food Industry panel. In any dispute involving a claim in excess of \$100,000, three arbitrators shall be employed. Absent a showing of good cause, the hearing shall be conducted within ninety (90) days from the service of the statement of claim and the decision

shall be rendered within thirty (30) days after the conclusion of the hearing. All proceedings shall be governed by the Federal Arbitration Act.

Each party shall bear the expense of its own attorneys, experts and out-of-pocket costs as well as fifty percent (50%) of the expense of administration and arbitrator fees. Anything to the contrary herein notwithstanding, attorneys' fees and costs, including, without limitation, the expenses of administration and the arbitration fees, shall be awarded by the arbitrators in accordance with the provisions of the applicable law governing this Agreement as it pertains to the award of costs and attorneys' fees to prevailing parties. However, the Retailer may be relieved from all or part of such obligation as it relates to such administration and arbitrator fees upon a finding by the arbitrator(s) of economic hardship.

The parties agree (i) TO WAIVE THE RIGHT TO RECEIVE CONSEQUENTIAL OR PUNITIVE DAMAGES, and (ii) that the arbitrators SHALL NOT HAVE THE POWER TO AWARD CONSEQUENTIAL OR PUNITIVE DAMAGES unless, in the case of (i) or (ii), the arbitrator(s) or a court of competent jurisdiction determines that this limitation, under the circumstances, violates public policy.

Depositions, other than those taken in lieu of live testimony, shall be limited to a total of ten (10) hours for each side, except upon the arbitrator(s) finding of special need for additional depositions. Parties shall be entitled to conduct document discovery in accordance with a procedure where responses to information requests shall be made within twenty (20) days from their receipt.

Either party shall be entitled to pursue remedies for emergency judicial relief in any court of competent jurisdiction, e.g., in order for Fleming to preserve its collateral, except that immediately following the preliminary adjudication of such request for emergency relief, the parties hereby consent to a stay of the judicial proceedings pending a determination of the dispute on the merits by arbitration as herein provided.

6. Change of Control. If there has been a Change of Control, upon thirty (30) days written notice to Retailer Fleming may terminate this Agreement.

7. Volume Incentive Rebate. Fleming will pay to Retailer a volume incentive rebate (the "Rebate") at a rate of 1.19% of Retailer's annual purchases of Products from Fleming. The Rebate shall be paid ten days after the end of each of Fleming's fiscal quarters during the term of this Agreement (except for the fourth fiscal quarter of each year) in installments of \$180,261.53 each, representing an estimate of the Rebate, based on aggregate purchases in the amount of the Purchase Target, assuming the Purchase Target is met in five years. The Rebate shall be prorated for the period from the Effective Date to the end of Fleming's first fiscal quarter following the Effective Date, and for the period from the end of Fleming's last full fiscal quarter during the Term until the end of this Agreement. Within thirty (30) days following the end of each of Fleming's fiscal years during the term of this Agreement, Fleming shall pay to Retailer the quarterly installment of the Rebate for the fourth fiscal quarter at which time Fleming and Retailer shall reconcile the Rebate paid during the preceding year to the actual purchases for such year. If Retailer's actual purchases from Fleming exceed the Rebate Target on an annualized basis, then Fleming shall pay to Retailer an additional payment

as necessary to cause the Rebate to equal 1.19% of Retailer's actual annual purchases from commencement of this Agreement to the end of the then current year of this Agreement. If Retailer's actual annual purchases do not exceed \$50,000,000, then Fleming shall adjust the Rebate to be paid for the fourth quarter of each year during the Term to equal 1.19% of Retailer's annual purchases for such year. If the Rebate for the fourth quarter is not large enough to permit an adjustment to 1.19% of annual purchases, Retailer shall promptly repay to Fleming any amount necessary to reconcile the Rebate to 1.19% of a purchases on an annual basis. By entering into this Agreement, Fleming has committed to devote such capital, employees, inventory, equipment, and facilities as are required to supply Retailer with the quantity of Products necessary for Retailer to earn the Rebate. Fleming is willing to so commit such resources because of the return it will realize from sale of Products in such quantities. It would be extremely difficult and impractical for Fleming to calculate the losses it would incur if Retailer does not purchase the Purchase Target of Products from Fleming for the entire Term of this Agreement. If Retailer discontinues using Fleming as its principal supplier of Products prior to the end of the Term, other than as a result of termination of this Agreement based on a default by Fleming, in lieu of Retailer purchasing the Purchase Target of Products during the Term, Retailer shall pay a fee to Fleming equal to the greater of (i) the Rebate actually paid to Retailer for the four previous full fiscal quarters, or (ii) \$721,046.12 (the "Termination Fee") not later than 30 days after such discontinuation; provided that if Retailer discontinues using Fleming as its principal supplier of Products after October 5, 2002, the Termination Fee shall be equal to the Rebate actually paid to Retailer for the four previous full fiscal quarters.

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

9. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Michigan.

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

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

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

(a) Notices to Fleming:

Fleming Companies, Inc.  
4676 Erie St. South  
Massillon, Ohio 44646  
Attention: Division President

With copies to:

Fleming Companies, Inc.  
5701 N. Shartel  
Oklahoma City, Oklahoma 73118  
Attn: Associate General Counsel

(b) Notices to Retailer:

L & L Food Centers, Inc.  
4924 S. Martin Luther King Jr. Blvd.  
Lansing, Michigan 48910  
Attention: Stan Levandowski II

With copies to:

Richard Lowe, Esq.  
2125 University Park Dr.  
Suite 250  
Okemos, Michigan 48864

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

13. Purchase of Store Supplies and Control Label Products. Upon the termination of this Agreement, Retailer will purchase from Fleming (i) all store supplies that Fleming has purchased or obtained as supplies for Retailer, and (ii) private label or label designated products, each group of which, because of any special design, label, logo, quantity, or other feature cannot be sold promptly by Fleming to other retailers being served by the product supply center servicing Retailer under this Agreement at the same price being paid for such supplies and control label products by Retailer. Retailer will pay to Fleming the then current price for such supplies and control label products being charged by Fleming to Retailer. Such amount will be paid and such supplies and products will be delivered by Fleming to Retailer within ten (10) days after termination of this Agreement.

14. Miscellaneous.

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

(b) Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and permitted assigns. Except as expressly provided herein, neither this Agreement nor the rights and obligations of the parties hereunder shall be assignable, and any purported assignment in contravention hereof shall be void without the consent of the other party; provided, however, Fleming shall have the right to



assign this Agreement in connection with the sale of substantially all of the business of Fleming at its product distribution center in Massillon, Ohio or at any other distribution center that services the Stores during the Term. However, if Fleming should consent to an assignment or if without Fleming's consent the rights and obligations of Retailer are transferred by operation of law or otherwise, Retailer shall require that such rights and obligations be assumed by the transferee.

(c) No Other Retailer Obligations. Except as otherwise provided in Section 13 of this Agreement, Retailer shall have no obligation to purchase any specific quantity or type of Products from Fleming.

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

(e) Entire Agreement. This Agreement is the final expression of the agreement of the parties regarding the purchase of Products by Retailer from Fleming and supersedes any prior or contemporaneous agreement between the parties pertaining to the matters covered by this Agreement. Except as set forth in the memorandum from Kent Bell to Ersin Bayraktar dated July 10, 2001 (updated July 18, 2001) regarding transition issues, there are no representations, promises, warranties, understandings, or agreements, express or implied, oral or otherwise, except those expressly referred to or set forth in this Agreement. Retailer acknowledges that the execution and delivery of this Agreement is its free and voluntary act and deed and that Retailer's execution and delivery have not been induced by or done in reliance upon any representations, promises, warranties, understandings, or agreements made by Fleming or its agents, officers, employees, or representatives that are not expressly stated in this Agreement. No promise, representation, warranty, or agreement made subsequent to the execution and delivery of this Agreement by either party, and no revocation, partial or otherwise, or change, amendment, addition, alteration, waiver or modification of this Agreement or any of the terms hereof will be enforceable, unless it is in writing and signed by Fleming and Retailer.

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

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

(h) No Effect. The length of the term of this Agreement may not correspond with the terms of other agreements between Fleming and Retailer, and nothing shall be implied therefrom. Furthermore, this Agreement shall have no relevance or effect in determining whether or not a loan, mortgage, sublease, license, franchise, or other agreement, if any, between Fleming and Retailer will be extended or renewed.

(i) Limitation of Actions. In accordance with the provisions of Article 2 of the Uniform Commercial Code, an action for breach of this Agreement must be

commenced within two years after the cause of action has occurred by sending the other party a statement of claim and demand for arbitration under the provisions of this Agreement.

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

(k) Force Majeure. Neither party shall be deemed in default of this Agreement if such party's non-performance is the result of a condition beyond such party's control, including, but not limited to, labor strikes, government rationing or other regulations, flood, fuel shortages, earthquake, acts of God, drought, and other weather conditions.

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

(m) Severable. If any provision of this Agreement is determined by a court of competent jurisdiction or arbitrators appointed pursuant to this Agreement to be void or unenforceable, then the remaining provisions of this Agreement shall be given effect as if such void or unenforceable provision was not a part of this Agreement.

15. Definitions. Capitalized terms used in this Agreement shall have the following meanings.

"Additional Stores" means additional retail grocery stores acquired or developed by Retailer during the term of this Agreement.

"Affiliate" means any Person that directly, or indirectly through one or more intermediaries, Controls Retailer (a "Controlling Person") or any Person that is Controlled by or is under common Control with a Controlling Person.

"Change of Control" means the acquisition by any Person of an equity interest in Retailer such that the Person has the power to Control Retailer, except that Excluded Transfers shall be ignored for purposes of determining whether there has been a Change of Control. The term "Excluded Transfers" shall mean transfers between: (1) Retailer's owners as

of the date of this Agreement (“Owners”); (2) Retailer and Owners; (3) Owners and entities controlled by Owners; (4) Owners and any trusts they create; (5) Owners and personal representatives of their estates (“Estates”); (6) Owners and their spouses, descendants, and spouses of descendants; and (7) any entity, including, but not limited to, the Estates, and any Person identified in item (1) – (6).

“Control” means possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of equity, by contract, or otherwise.

“Effective Date” shall have the meaning stated in Section 4 of this Agreement.

“Fleming” shall have the meaning stated in the first paragraph of this Agreement.

“Term” shall have the meaning stated in Section 4 of this Agreement.

“Period” means any of the thirteen (13) four-week periods into which Fleming divides each calendar year for Fleming’s internal accounting purposes.

“Person” means any individual, a partnership, a corporation, an association, a limited liability company, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department agency or political subdivision thereof).

“Products” means food, grocery, meat, perishables, health and beauty care products, and other related products, supplies, and general merchandise described in the Selling Plan that Fleming offers for sale to its other retail customers.

“Purchase Target” shall have the meaning contained in Section 4 of this Agreement.

“Retailer” means the person identified in the first paragraph of this Agreement and any successors thereof.

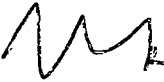
“Selling Plan” shall have the meaning described in Section 2 of this Agreement.

“Stores” means any of the retail grocery stores operated by Retailer at the locations described in Exhibit “A” of this Agreement, as well as any Additional Stores.

“Termination Fee” shall have the meaning contained in Section 8 of this Agreement.

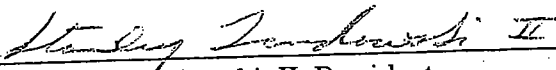
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

FLEMING COMPANIES, INC., an Oklahoma corporation

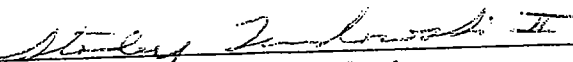
By   
Name: William C. Mico  
Title: ~~Vice President, Shared Services-Real Estate~~

"FLEMING"

L & L FOOD CENTER INC., a Michigan corporation

By   
Stanley Levandowski, II, President

LEVANDOWSKI, L.L.C.

By   
Stanley Levandowski, II, Member

"RETAILER"

EXHIBIT A

Stores

L & L Food Center  
5016 S. Martin L. King Jr. Blvd.  
Lansing, MI 48910

L & L Food Center  
19250 South U.S. 27  
DeWitt, MI 48820

L & L Food Center  
3630 South Cedar St.  
Lansing, MI 48910

L & L Food Center  
3188 Walton Blvd.  
Rochester Hills, MI 48309

L & L Food Center  
1615 West Mt. Hope  
Lansing, MI 48910

L & L Food Center  
3800 West Saginaw  
Lansing, MI 48917

L & L Food Center  
6075 North Hagadorn  
East Lansing, MI 48823

L & L Food Center  
1671 Haslett Road  
Haslett, MI 48840

L & L Food Center  
2380 North Cedar St.  
Holt, MI 48842

L & L Food Center  
1619 W. Grand River Avenue  
Okemos, MI 48864

L & L Food Center  
1005 South U.S. 27  
St. Johns, MI 48879

Levandowski Sausage Company  
5016 S. Martin L. King Jr. Blvd.  
Lansing, MI 48910

EXHIBIT B

FLEMING COMPANIES, INC.

FLEMING FLEXMATE MARKETING PLAN

Plan

The FlexMate Marketing Plan (the "FlexMate Plan") applies to all warehouse Grocery (including tobacco, cigarettes, continuities warehouse supplies), Dairy (including eggs) and Frozen food products (the "Plan Products"). Plan Products are sold F.O.B. the Product Supply Center's (the "PSC") loading dock at their established Fleming Quoted Sell Price (as herein defined) plus a distribution fee as set forth on Attachment A. If Fleming provides the delivery service, it will be priced separately.

Customer Qualifications

FlexMate applies to customers (the "Retailer" or Retailers") for whom Fleming acts as their primary supplier. To qualify, Retailer must meet the following requirements:

- (1) Orders. Electronically order products (Fleming approved electronic ordering system).
- (2) Minimum Purchases. Submit weekly individual store orders of a minimum of Plan Products as set forth on Attachment A.
- (3) Prebooked Orders. Provide prebooked order quantities for major ad features and promotion items.

Fleming Quoted Sell Price For Plan Products

Plan Products are priced at the Fleming Quoted Sell Price (the "Quoted Sell Price") before a distribution fee and freight for each Plan Product determined in Fleming's sole judgment and discretion. Changes to the Quoted Sell Price will be made through periodic price announcements by the PSC, provided, Fleming retains the right to change the Quoted Sell Price at any time.

Vendor Promotional Allowances

- (1) Non-performance Allowances. Non-performance, off invoice, per-case allowances are passed on to the Retailer without any requirements for performance. Such allowances will be made for a period equal to, but not necessarily concurrent with, the period the vendor offers the allowances.
- (2) Bill-back Allowances. Per-case bill-back allowances that are performance or merchandising/advertising related (where the terms of the trade agreement have been met) are made as a reduction in Fleming Quoted Sell Price and shown on the Retailer's Plan Product invoice during the established promotional period. Fleming will retain an administrative charge for managing the program.
- (3) Other Allowances. All other allowances are retained by the PSC.

## ating Requirements - Distribution

Distribution system practices and procedures:

- (1) Master Order Schedule. Orders for Plan Products must be received at the PSC in accordance with the master order schedule. Add-on or manual orders may have an additional charge, at the discretion of Fleming.
- (2) Specific Orders. Plan Products procured specifically for an individual Retailer must be accepted when delivered to the Retailer.
- (3) Shortages and Damaged Plan Products. Credit requests for shortages or damaged Plan Products must be approved by customer service in accordance with the PSC's established credit policy.
- (4) PSC Errors. Any product returned due to a PSC error will be credited based upon the amount billed.

## ivery

If Fleming delivers Plan Products, Fleming will add on delivery charges as described on Attachment A.

## ier Charges - Additional Services

Retailers requiring additional services will be charged for such service as determined by Fleming in its sole discretion. Examples of such additional services include (but are not limited to): (1) Membership/Ad Group Fee; (2) Add-on Order; (3) Non-pallet deliveries; and (4) Product returns. These services and charges are set forth on Attachment A.

## ervices and Programs Not Explicitly Identified in the FlexMate Plan

Under the FlexMate Plan, many of the extra services and programs have been eliminated in order to offer lower prices. Retailers will be billed at the established rates for standard retail support services not included as part of the PSC's basic program. In addition, if a Retailer requires the development of customized software, special computer reports or system interfaces, the Retailer will be charged for these special services. The Retailer will be notified of the amount of the charges.

## arketing Support Services

Fleming offers a complete array of value-added marketing support services. These services are priced separately from the price for Plan Products to allow Retailers to choose the services they desire. Detailed information including price on each of the services is available from Fleming.

## Dispute Resolution

By becoming a Fleming retail customer, a Retailer will agree that all disputes between Fleming and the Retailer arising out of the purchase and sale of products under the FlexMate Plan (except for disputes relating to indebtedness) that can not be mutually resolved directly by the parties shall be resolved by final, binding arbitration in accordance with the procedures of the American Arbitration Association. Any action subject to arbitration must be commenced within two (2) years after the cause of action has accrued by sending the other party a statement of claim and demand for arbitration. A cause of action is accrued when the breach occurs regardless of the aggrieved party's lack of knowledge of the breach.

## Changes to the FlexMate Plan

While the Fleming Quoted Sell Price may be changed at any time, any other part of this Plan may be changed at Fleming's sole discretion with thirty (30) days notice to the Retailer.

ent Grocery, Frozen and Dairy Sell Plans

This FlexMate Plan supersedes and replaces any existing oral or written Grocery, Frozen and Dairy Sell Plan(s) (except any Pro/FlexStar Marketing Plans) that may be in use at the PSC.

uct Freshness - Dairy

The PSC has established the following minimum dating criteria for perishable Plan Products:

Cheeses	14 days before expiration
Margarine	14 days before expiration
Cultured Products	7 days before expiration
Chilled Juices	7 days before expiration
Dough Products	9 days before expiration
Butter	9 days before expiration

dit and Payment Terms

The following standard credit and payment terms have been established for Plan Products sold under the FlexMate Plan.

- (1) Payment - Summary Statements. All payments must be made for the *full* amount due as shown on the Retailer's periodic summary statement. This will be accomplished by: (1) signed blank check to be completed by Fleming, (2) payment to the driver at time of delivery (C.O.D.), (3) store notified of balance due, and check received for deposit first business day after statement or (4) cashier's check/wire transfer.
- (2) Payment - Individual Invoices. Retailers who make payment based upon individual invoices as opposed to a summary statement will be required to make payments under a format agreed to by Fleming and the Retailer.
- (3) Amount of Payments. All payments must be for the exact statement or invoice amount. The payment system shall not be used as a vehicle for dispute reconciliation. Fleming will respond promptly to Retailer requests for credit or adjustments and when credit is authorized, it will be shown on the Retailer's statement.
- (4) Credit Terms. Fleming's standard credit terms, for Retailers who meet Fleming's basic credit extension standards, is payment of the statement in full with good funds on the first business day after the statement is prepared and delivered to Retailer.
- (5) Alternative Credit Terms. Retailers who cannot satisfy Fleming's credit policy have alternative terms available which include: (i) establishment of a noninterest bearing deposit with Fleming equal to the customer's maximum outstanding trade account balance, and (ii) prepayment before product shipment or prepayment before product selection.
- (6) Delinquencies. Retailers that are not current, within their established terms, should not expect to receive shipments of Plan Products until such Retailers have made arrangements (satisfactory to Fleming) for correcting the delinquency.

Pallet Accountability

All pallets delivered and/or returned are tracked by Fleming. The number of pallets out of normal balance will be reconciled with the Retailer. Only standard entry, 48" by 40" GMA grocery pallets in good condition or qualified third-party pallets will be used for delivery. Only pallets of the type used for that store's delivery and that are in good condition will be accepted for return. The PSC will note quantity of pallets delivered and returned on each delivery.



## Store Credit Memo Policy

The Store Credit Memo Policy has been developed to help reduce labor cost associated with the delivery of Plan Products in order to mutually benefit Fleming and the Retailer and ultimately improve both operations. For the Retailer to receive accurate and timely credit(s), it is important that the procedure be followed.

### All Non Perishable Plan Product

- (1) Guaranteed Sales. No merchandise is sold to the Retailer on a guaranteed sale basis unless it is specifically noted and the terms stated on the booking sheet or announcement bulletin.
- (2) Selection Errors. In the event of a selection error (mispulled or mislabeled), and the Plan Product is carried by the store, the store shall keep the product and a credit will be issued to adjust any price difference. If the Plan Product is not carried by the store, the store may call customer service within 24 hours to request a pickup or have the driver write a request for credit at time of delivery. After the product is received and verified (including the intact, original picking label) at the PSC, credit will be issued for the amount of the invoice price shown on the Plan Product invoice.
- (3) Roller-stop Deliveries. Roller-stop deliveries must report any shortages or damages to the driver at the time of delivery.
- (4) Pallet-stop Deliveries. Retailers receiving pallet-stop deliveries must report any shortages or damages within 24 hours. Cigarettes, fresh meat, produce and repack must be counted at time of delivery, verified by Retailer and driver. Claims for shortages must be made at time of delivery.
- (5) Order Mistakes. If a Retailer makes a mistake on an order which is detected at time of delivery, the driver may write a request for credit. If found after the delivery, the Retailer may call customer service at the PSC before the next delivery to request a pickup. If the request is approved, the product will be credited (less the product return charge as detailed in the "Other Charges" section above) after the product is received and verified at the PSC.
- (6) Plan Products Not Stocked. Prebooked merchandise and/or Plan Product not regularly stocked by the PSC cannot be returned.
- (7) Time-Savers. The warehouse Time-Savers are prepared to account for damaged units removed from a case. Retailer will be required to complete the store information and return the large portion of the card to customer service. All credits will be at the retail price and will be issued only when less than 25% of the case has been removed. Time-Savers can also be used for partial case damage at time of delivery.

### Perishable Plan Products

Credit requests on all perishables due to quality must be called in to the respective merchandising department within 24 hours of delivery. Credit will not be issued if the respective merchandising department is not notified within 24 hours.

### Vendor Credits

Any shortages or quality problems on Vendor-to-Store products must be identified and communicated to the respective merchandising department before signing the bill of lading or delivery receipts. The truck must not be released until the respective merchandising department has approved any invoice adjustments. Credit on Vendor-to-Store product will not be issued unless the respective merchandising department has been notified prior to signing the bill of lading or delivery receipt.

# **Fleming Companies Inc**

## **General Merchandise Distribution Sell Plan**

### **The Plan**

The Fleming General Merchandise Distribution Plan (the "Plan") applies to all warehouse General Merchandise ("GM"), Health and Beauty Care ("HBC") products, and Specialty Food ("Specialty Food") items as classified by Fleming (the "Plan Products"). Plan Products are sold on a delivered basis at Fleming's Quoted Sell Price (as herein defined) plus a distribution fee as set forth on Attachment A.

### **Customer Qualifications**

This Plan applies to customers (the "Retailer" or "Retailers") for whom Fleming acts as their primary supplier of General Merchandise, Health and Beauty Care products, and Specialty Food items (as classified by Fleming). To qualify, Retailer must comply with all the following:

1. **Orders** - Electronically order Plan Products (Fleming approved electronic ordering system).
2. **Minimum Purchases** - Submit weekly individual store orders of a minimum of Plan Products as set forth on Attachment A.

### **Fleming's Quoted Sell Price for Plan Products**

Plan Products are priced at the Fleming Quoted Sell Price (the "Quoted Sell Price") before a distribution fee for each Plan Product determined in Fleming's sole judgement and discretion. Retailers will be advised of normal changes to an item's Quoted Sell Price through the GM Warehouse's periodic price announcement bulletins, provided, Fleming retains the right to change the Quoted Sell Price at any time.

### **Vendor Promotional Allowances**

1. **Non -Performance Allowances** - Vendor published non-performance, off invoice, per-case allowances are passed onto the Retailer without any requirements for performance. Such allowances will be made for a period equal to, but not necessarily concurrent with, the vendor's published ship dates.
2. **Performance Allowances** - Retailer allowances requiring specific performance by the Retailer to qualify (excluding advertising allowances) will be passed on to the Retailer, if the terms of the trade agreement between the vendor and the GM warehouse have been met. The allowance will be in one of the following forms at the GM Warehouse's option:
  - Reduction of the Plan Product's selling price on a GM warehouse Invoice.
  - Check payable to the qualifying Retailer
  - Credit Memo
3. **Advertising Allowances** - Vendor-provided advertising and promotional allowances will be passed through to the Retailer in accordance with the requirements of the Vendor. The allowance will be in one of the following forms at the GM warehouse's option:
  - Reduction of the Plan Product's selling price on a GM warehouse Invoice.
  - Check payable to the qualifying Retailer
  - Credit Memo.
4. **Other Allowances** - All other allowances are retained by the GM Warehouse

### **Credit and Payment Terms:**

Plan Products statements must be paid in accordance with the applicable PSC payment terms that apply to Grocery, Frozen and Dairy.

### **Supersedes Current General Merchandise Sell Plans:**

This General Merchandise Sell Plan supersedes and replaces any existing oral or written General Merchandise Sell Plan(s) or any other sell plans covering Plan Products that may be in use at the GM warehouse.

### **Operating Requirements for Shared Efficiencies**

The following practices and procedures have been established to provide a complete, efficient product distribution program:

1. Store orders for Plan Products must be received at the GM warehouse in accordance with the master order schedule. Add on or manual orders may have an additional charge.
2. Plan Products procured specifically for an individual retailer must be accepted when delivered to the store.
3. Credit requests for shortages or damages must be approved by the customer service buyer in accordance with the GM warehouse's established credit policy.
4. Return privileges are set forth on Attachment A

### **Changes to the Plan**

While the Fleming Quoted Sell Price may be changed at any time, any other part of this Plan may be changed at Fleming's sole discretion with thirty (30) days notice to the Retailer

### **Dispute Resolution**

By becoming a Fleming retail customer, a Retailer agrees, that all disputes between Fleming and the Retailer arising out of the purchase and sale of Plan Products under the Plan (except for disputes relating to indebtedness) that cannot be mutually resolved directly by the parties, shall be resolved by final binding arbitration in accordance with the procedures of the American Arbitration Association. Any action subject to arbitration must be commenced within two (2) years after the cause of action has accrued by sending the other party a statement of claim and demand for arbitration. A cause of action is accrued when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

### **GM Warehouse Specific Optional Programs**

Any GM Warehouse Specific Optional Program such as volume based incentives are described on Attachment A.

### **Volume Rebate Incentives**

Volume Rebate Incentives may be offered to Retailer as set forth on Attachment A.

### **Efficiency Rebates**

Efficiency rebates may be offered to Retailer as set forth on Attachment A

### **Swell Allowance**

A Swell allowance will be paid to a Retailer who waives the return of damaged or discontinued products set forth on Attachment A.

### **Value Added Retailer Service Charges**

Fleming GM offers certain value added retail services to assist Retailers in effectively managing their GM, HBC, and Specialty Foods programs. These optional services and charges are set forth on Attachment A.

### **Totes and Pallet Reconciliation**

Totes and pallets delivered and/or retained are tracked by Fleming. The number of totes and pallets out of normal balance will be reconciled with the Retailer, and may include a charge or credit to the Retailer.

Attachment A  
**Fleming FlexMate® Grocery, Frozen and Dairy Marketing Plan**  
 Massillon Product Supply Center  
 effective 6/15/01  
 for  
 L & L Food Centers

Distribution Fees (these rates may be blended across all stores stores)  
Grocery/Tobacco (excluding Cigarettes) Frozen (including Bakery)

Weekly Purchases per Store Grocery and Dairy (Average for period)	Fee base on unload rate (unload bracket reviewed quarterly)			Weekly Purchases per Store Frozen (Average for period)	Fee base on unload rate (unload bracket reviewed quarterly)		
	0 - 350	351 - 600	601+		0 - 350	351 - 600	601+
\$0 - \$2,625	5.550%	5.050%	4.950%	\$0 - \$275	9.440%	8.940%	8.840%
\$2,625 - \$5,250	5.300%	4.800%	4.700%	\$275 - \$525	9.200%	8.700%	8.600%
\$5,250 - \$10,500	4.800%	4.300%	4.200%	\$525 - \$1,050	8.200%	7.700%	7.600%
\$10,500 - \$15,750	4.235%	3.735%	3.635%	\$1,050 - \$1,575	7.185%	6.685%	6.585%
\$15,750 - \$21,000	4.060%	3.560%	3.460%	\$1,575 - \$2,100	6.480%	5.980%	5.880%
\$21,000 - \$26,250	3.686%	3.186%	3.086%	\$2,100 - \$2,625	6.216%	5.716%	5.616%
\$26,250 - \$31,500	3.453%	2.953%	2.853%	\$2,625 - \$3,150	5.943%	5.443%	5.343%
\$31,500 - \$36,750	3.326%	2.826%	2.726%	\$3,150 - \$3,675	5.776%	5.276%	5.176%
\$36,750 - \$42,000	3.149%	2.649%	2.549%	\$3,675 - \$4,200	5.649%	5.149%	5.049%
\$42,000 - \$47,250	3.055%	2.555%	2.455%	\$4,200 - \$4,725	5.565%	5.065%	4.965%
\$47,250 - \$52,500	2.971%	2.471%	2.371%	\$4,725 - \$5,250	5.501%	5.001%	4.901%
\$52,500 - \$57,750	2.917%	2.417%	2.317%	\$5,250 - \$5,775	5.407%	4.907%	4.807%
\$57,750 - \$63,000	2.853%	2.353%	2.253%	\$5,775 - \$6,300	5.343%	4.843%	4.743%
\$63,000 - \$68,250	2.794%	2.294%	2.194%	\$6,300 - \$6,825	5.294%	4.794%	4.694%
\$68,250 - \$73,500	2.755%	2.255%	2.155%	\$6,825 - \$7,350	5.255%	4.755%	4.655%
\$73,500 - \$78,750	2.719%	2.219%	2.119%	\$7,350 - \$7,875	5.219%	4.719%	4.619%
\$78,750 - \$84,000	2.684%	2.184%	2.084%	\$7,875 - \$8,400	5.184%	4.684%	4.584%
\$84,000 - \$89,250	2.653%	2.153%	2.053%	\$8,400 - \$8,925	5.153%	4.653%	4.553%
\$89,250 - \$94,500	2.622%	2.122%	2.022%	\$8,925 - \$9,450	5.122%	4.622%	4.522%
\$94,500 - \$99,750	2.592%	2.092%	1.992%	\$9,450 - \$9,975	5.092%	4.592%	4.492%
\$99,750 - \$105,000	2.564%	2.064%	1.964%	\$9,975 - \$10,500	5.014%	4.514%	4.414%
\$105,000 - \$110,250	2.516%	2.016%	1.916%	\$10,500 - \$11,025	4.986%	4.486%	4.386%
\$110,250 - \$115,500	2.499%	1.999%	1.899%	\$11,025 - \$11,550	4.959%	4.459%	4.359%
\$115,500 - \$120,750	2.483%	1.983%	1.883%	\$11,550 - \$12,075	4.933%	4.433%	4.333%
\$120,750 - \$126,000	2.467%	1.967%	1.867%	\$12,075 - \$12,600	4.877%	4.377%	4.277%
\$126,000 - \$131,250	2.452%	1.952%	1.852%	\$12,600 - \$13,125	4.822%	4.322%	4.222%
\$131,250 - \$136,500	2.437%	1.937%	1.837%	\$13,125 - \$13,650	4.767%	4.267%	4.167%
\$136,500 - \$141,750	2.422%	1.922%	1.822%	\$13,650 - \$14,175	4.622%	4.122%	4.062%
\$141,750 - \$147,000	2.408%	1.908%	1.808%	\$14,175 - \$14,700	4.608%	4.108%	4.008%
\$147,000 - \$152,250	2.394%	1.894%	1.794%	\$14,700 - \$15,225	4.554%	4.054%	3.954%
\$152,250 - \$157,500	2.381%	1.881%	1.781%	\$15,225 - \$15,750	4.501%	4.001%	3.901%
\$157,500 - \$162,750	2.368%	1.868%	1.768%	\$15,750 - \$16,275	4.448%	3.948%	3.848%
\$162,750 - \$173,250	2.364%	1.864%	1.764%	\$16,275 - \$17,325	4.444%	3.944%	3.844%
\$173,250 - \$183,750	2.359%	1.859%	1.759%	\$17,325 - \$18,375	4.389%	3.889%	3.789%
\$183,750 - \$194,250	2.354%	1.854%	1.754%	\$18,375 - \$19,425	4.384%	3.884%	3.784%
\$194,250 - \$204,750	2.339%	1.839%	1.739%	\$19,425 - \$20,475	4.379%	3.879%	3.779%
\$204,750 - \$215,250	2.335%	1.835%	1.735%	\$20,475 - \$21,525	4.375%	3.875%	3.775%
\$215,250 - \$225,750	2.331%	1.831%	1.731%	\$21,525 - \$22,575	4.371%	3.871%	3.771%
\$225,750 +	2.328%	1.828%	1.728%	\$22,575 +	4.368%	3.868%	3.768%

Dairy Distribution Fees are the applicable Grocery Fee plus .50%

Attachment A  
**Fleming FlexMate® Grocery, Frozen and Dairy Marketing Plan**  
 Massillon Product Supply Center  
 effective 6/15/01  
 for  
 L & L Food Centers  
 (continued)

Delivery Charges

All Products 1.97%

Fuel Surcharge

Due to the uncertainty and variability of fuel prices, it is necessary for the PSC to utilize a fuel surcharge program that allows the recovery of any price increases. The program is inactive until the price of fuel, including tax, exceeds \$1.50 per gallon. The surcharge rate is recalculated weekly and will be added (if needed to) to the rates shown above in the Delivery Rate.

Other Charges

Label Charge	n/a
Cigarettes	\$0.02 / case
All Other Products	
Weekly Service Charge	\$ 0.00 / week
Telxon Charge	\$ 0.00 / week
Add-on orders	\$1.00 / line
Stop Charge for Extra Deliveries	\$25.00 / Extra Delivery
Pallets	
Wood	\$7.50
Chep	\$15.00
Plastic	\$25.00
GMD Tote	\$8.00

Product Returns

Product returns due to store order mistakes can be initiated as a request from the store or at the time of delivery after calling customer service or the appropriate department personnel. The PSC reserves the right to refuse to accept returns for store order mistakes. If accepted for return, the PSC may assess a return charge of \$3.00 per case or \$15.00 per pallet (whichever is less).

Product Credit Procedures for Shortages and Selection Errors

If an adjustment is for less than \$100, a "Request for Invoice Adjustment" form should be completed by the store and submitted to Fleming for its review and approval. If the "problems" is valued at more than \$100, the Customer Service Coordinator should be contacted.

