

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

2001 FEB 23 AM 9:20

IN RE:  
FURR'S SUPERMARKETS, INC.,  
Debtor.

NO. 7-01-10779 SA

COURT  
CLERK, R.M.

**WERNER KINDERMANN'S MOTION FOR PAYMENT OF LEASE CURE  
AMOUNTS**

COMES NOW Werner Kindermann ("Kindermann"), by and through his attorneys Kelcher & McLeod, P.A. (James C. Jacobsen) and hereby moves the Court for its Order directing the Trustee to pay certain Cure Amounts due upon the assumption and assignment by the Estate of the Leases of Debtor's Stores 881 and 884. and as grounds states:

1. Furr's Supermarkets, Inc. filed a petition for relief under Chapter 11 of the Bankruptcy Code on or about February 8, 2001. At the time, it was Lessee under the terms of two Supermarket Leases with Kindermann, dated December 5, 1986. of supermarkets at 3301 Southern Blvd., Rio Rancho, New Mexico, Furr's Supermarkets' Store 881, and 111 Coors Road NW, Albuquerque, New Mexico, Furr's Supermarkets' Store 884.

2. The Leases to both stores were assumed and assigned under the terms of the Estate's transaction with Fleming Company, Store 881 to Raleys of New Mexico and 884 to Smith's Food and Drug.

3. The two leases were triple net leases, and required Furr's Supermarkets to pay all Common Area Maintenance ("CAM") and utility charges. CAM charges were billed directly by the property manager to Furr's under the terms of the applicable Easements, Covenants and Restrictions Agreements, see. e.g., Bates stamped pages

1727

02297-02355 of the Estoppel Packet for Store 881. Water and sewer charges were billed directly to Furr's and paid by Furr's directly to the city.

4. On or about April 3, 2001, under the provisions of paragraph two of the Court's "Order Approving Procedure Relating to the §365(B)(1) Cure and Adequate Assurance Requirements for Assumption of Leases" entered July 23, 2001, the Debtor gave its "Notice of Proposed Cure Amounts, Objection Deadline and Final Hearing", setting forth the amounts the Debtor thought were required to cure lease defaults, and giving creditors a limited period to contest the amounts specified.

5. With respect to Store 881, the Notice listed CAM charges totaling \$12,217.00 due, but noted an unspecified dispute. Because CAM charges were paid by Furr's directly to the property manager, (the various Lease-related agreements provide that all notices from Pan Pacific would be given to Furr's, and vice-versa), Kindermann had no knowledge of any dispute. Similarly, Kindermann had no notice that Furr's was not paying water and sewer charges.

6. As noted above, the two Kindermann Leases were assumed and assigned. Kindermann received wire transfers on September 5, 2001 and September 26, 2001 of the funds required to cure monthly rent defaults and pay real estate taxes. CAM charges should have been, and historically were, paid directly to the property manager, and Kindermann did not suspect anything amiss when no CAM cure payment was made to Kindermann.

7. In May, 2002, Kindermann was contacted by Pan Pacific Development (New Mexico), property manager for the Rio Rancho store, and informed that Furr's had not paid CAM charges incurred after December 1999, through the assignment to

Fleming/Raley's. Pan Pacific provided the Aged Delinquency report attached as Exhibit A showing unpaid CAM charges totaling \$12,561.02. The discrepancy between what was owed per the report and what was shown in the Notice is presumably the basis for dispute noted.

8. Upon information and belief, rather than resolve the dispute or pay the amount necessary to cure the arrearage, Furr's elected to ignore the problem.

9. The payment required to satisfy the CAM charges is a cure amount which should have been paid by the Estate to Pan Pacific Development in September 2001, but through misfeasance or neglect, was not.

10. The Estate should pay the CAM charges for Store 881 incurred prior to September 2001 so as to complete the cure required by §365 and the Orders of this Court.

12. In June, 2002 Kindermann received notice from Smith's Food & Drug, assignee of the Lease of Store 884, that water and sewage charges, in the amount of \$4,191.62, incurred prior to September 2001, had not been paid, and that the City of Albuquerque was threatening to terminate service. See Exhibit B attached hereto and incorporated by reference.

13. The payment to the City of Albuquerque is a cure amount, the existence of which was known or should have been known by Furr's. The fact that Furr's was not paying for water and sewage billed directly to it was unknown to Kindermann.

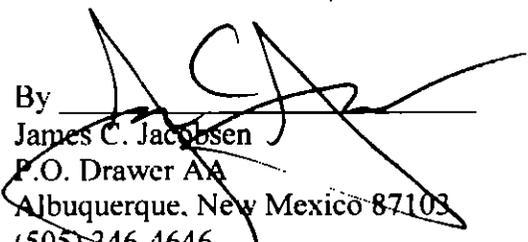
14. The payment required to satisfy the water and sewer charges is a cure amount which should have been paid by the Estate to the City of Albuquerque in September 2001, but through misfeasance or neglect, was not.

15. The Estate should pay the water and sewage charges for Store 884 and any other store similarly situated.

16. Concurrence of the Trustee to the relief sought has been sought and was denied.

WHEREFORE, Werner Kindermann prays the Court enter its Order directing the Estate to complete the payment of the cure amount for CAM charges due under the terms of the Supermarket Leases, direct the Estate to either pay the \$12,561.02 in CAM charges due Pan Pacific Development or resolve its dispute with Pan Pacific Development and pay the amount which is determined to be due and owing, pay the \$4,191.62 in unpaid water and sewage charges incurred prior to September 2001, and grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted,  
KELEHER & McLEOD, P.A.

By   
James C. Jacobsen  
P.O. Drawer AA  
Albuquerque, New Mexico 87103  
(505) 346-4646  
(505) 346-1370 (fax)

I certify that I mailed a true copy of the foregoing Request for Payment to :

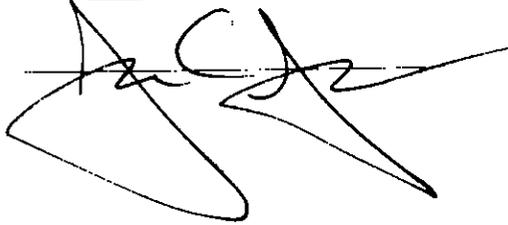
Yvette Gonzales  
P.O. Box 1037  
Placitas, NM 87043-0621  
*Trustee*

Robert Jacobvitz  
500 Marquette NW, Suite 650  
Albuquerque, NM 87102  
*Attorney for Trustee*

Richard Leverick  
5120 San Francisco NE  
Albuquerque, NM 87109  
*Attorney for Pan Pacific*

Robert Waldman  
P.O. Box 2248  
Albuquerque, NM 87103-2248  
*Attorney for City of Albuquerque*

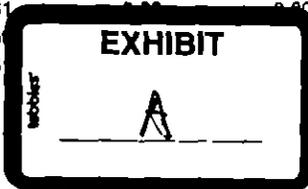
this 2<sup>nd</sup> day of June, 2002

A large, stylized handwritten signature in black ink, appearing to be 'R. Waldman', written over a horizontal line.

Database: PRRP_PROD	Aged Delinquencies	Page: 83
BLDGID: 410600	Pan Pacific Production Database	Date: 5/8/02
	Country Club Center	Time: 07:35 AM
	Period: 05/02	

Invoice Date	Category	Source	Amount	Current	31	62	93	124
4/3/02	CPARKER	Second demand notice sent with new owner info.						
3/13/02	CPARKER	Rick Leverick sent follow up letter to original default.						
3/4/02	CPARKER	Default letter expired 2/28/02. Rick Leverick to proceed with next step.						

1/1/00	CAM	Common Area Maintenance	CH	459.29	0.00	0.00	0.00	0.00	459.29
1/1/00	INS	Insurance	CH	29.00	0.00	0.00	0.00	0.00	29.00
2/1/00	CAM	Common Area Maintenance	CH	459.29	0.00	0.00	0.00	0.00	459.29
2/1/00	INS	Insurance	CH	29.00	0.00	0.00	0.00	0.00	29.00
2/20/00	PCM	Prior Year CAM	CH	209.53	0.00	0.00	0.00	0.00	209.53
3/1/00	CAM	Common Area Maintenance	CH	459.29	0.00	0.00	0.00	0.00	459.29
3/1/00	INS	Insurance	CH	29.00	0.00	0.00	0.00	0.00	29.00
4/1/00	CAM	Common Area Maintenance	CH	459.29	0.00	0.00	0.00	0.00	459.29
4/1/00	INS	Insurance	CH	29.00	0.00	0.00	0.00	0.00	29.00
5/1/00	CAM	Common Area Maintenance	CH	459.29	0.00	0.00	0.00	0.00	459.29
5/1/00	INS	Insurance	CH	29.00	0.00	0.00	0.00	0.00	29.00
6/1/00	CAM	Common Area Maintenance	CH	459.29	0.00	0.00	0.00	0.00	459.29
6/1/00	INS	Insurance	CH	29.00	0.00	0.00	0.00	0.00	29.00
7/1/00	CAM	Common Area Maintenance	CH	459.29	0.00	0.00	0.00	0.00	459.29
7/1/00	INS	Insurance	CH	29.00	0.00	0.00	0.00	0.00	29.00
8/1/00	CAM	Common Area Maintenance	CH	459.29	0.00	0.00	0.00	0.00	459.29
8/1/00	INS	Insurance	CH	29.00	0.00	0.00	0.00	0.00	29.00
9/1/00	CAM	Common Area Maintenance	CH	459.29	0.00	0.00	0.00	0.00	459.29
9/1/00	INS	Insurance	CH	29.00	0.00	0.00	0.00	0.00	29.00
10/1/00	CAM	Common Area Maintenance	CH	459.29	0.00	0.00	0.00	0.00	459.29
10/1/00	INS	Insurance	CH	29.00	0.00	0.00	0.00	0.00	29.00
11/1/00	CAM	Common Area Maintenance	CH	459.29	0.00	0.00	0.00	0.00	459.29
11/1/00	INS	Insurance	CH	29.00	0.00	0.00	0.00	0.00	29.00
12/1/00	CAM	Common Area Maintenance	CH	459.29	0.00	0.00	0.00	0.00	459.29
12/1/00	INS	Insurance	CH	29.00	0.00	0.00	0.00	0.00	29.00
1/1/01	CAM	Common Area Maintenance	CH	663.27	0.00	0.00	0.00	0.00	663.27
1/1/01	INS	Insurance	CH	24.68	0.00	0.00	0.00	0.00	24.68
1/19/01	PCM	Prior Year CAM	NC	-2,087.48	0.00	0.00	0.00	0.00	-2,087.48
2/1/01	CAM	Common Area Maintenance	CH	1,093.20	0.00	0.00	0.00	0.00	1,093.20
2/1/01	INS	Insurance	CH	24.68	0.00	0.00	0.00	0.00	24.68
2/20/01	PCM	Prior Year CAM	CH	2,682.66	0.00	0.00	0.00	0.00	2,682.66
2/20/01	PIN	Prior Year Insurance	NC	-36.70	0.00	0.00	0.00	0.00	-36.70
3/1/01	CAM	Common Area Maintenance	CH	663.27	0.00	0.00	0.00	0.00	663.27
3/1/01	INS	Insurance	CH	24.68	0.00	0.00	0.00	0.00	24.68
4/1/01	CAM	Common Area Maintenance	CH	663.27	0.00	0.00	0.00	0.00	663.27
4/1/01	INS	Insurance	CH	24.68	0.00	0.00	0.00	0.00	24.68
5/1/01	CAM	Common Area Maintenance	CH	663.27	0.00	0.00	0.00	0.00	663.27
5/1/01	INS	Insurance	CH	24.68	0.00	0.00	0.00	0.00	24.68
6/1/01	CAM	Common Area Maintenance	CH	663.27	0.00	0.00	0.00	0.00	663.27
6/1/01	INS	Insurance	CH	24.68	0.00	0.00	0.00	0.00	24.68
7/1/01	INS	Insurance	CH	24.68	0.00	0.00	0.00	0.00	24.68
8/1/01	CAM	Common Area Maintenance	CH	1,326.54	0.00	0.00	0.00	0.00	1,326.54
8/1/01	INS	Insurance	CH	24.68	0.00	0.00	0.00	0.00	24.68
9/1/01	CAM	Common Area Maintenance	CH	2,382.98	0.00	0.00	0.00	0.00	2,382.98
9/1/01	INS	Insurance	CH	24.68	0.00	0.00	0.00	0.00	24.68
10/1/01	CAM	Common Area Maintenance	CH	2,382.98	0.00	0.00	0.00	0.00	2,382.98
10/1/01	INS	Insurance	CH	24.68	0.00	0.00	0.00	0.00	24.68
11/1/01	CAM	Common Area Maintenance	CH	2,382.98	0.00	0.00	0.00	0.00	2,382.98
11/1/01	INS	Insurance	CH	24.68	0.00	0.00	0.00	0.00	24.68
12/1/01	CAM	Common Area Maintenance	CH	2,382.98	0.00	0.00	0.00	0.00	2,382.98
12/1/01	INS	Insurance	CH	24.68	0.00	0.00	0.00	0.00	24.68
1/1/02	CAM	Common Area Maintenance	CH	2,430.61	0.00	0.00	0.00	0.00	2,430.61
1/1/02	INS	Insurance	CH	108.90	0.00	0.00	0.00	0.00	108.90
2/1/02	CAM	Common Area Maintenance	CH	2,430.61	0.00	0.00	2,430.61	0.00	0.00



**SENT VIA CERTIFIED MAIL**

June 18, 2002

Mr. Jan Friedrich  
9705 Pebble Beach Drive  
Albuquerque, New Mexico 87111

Re: Smith's Store #498 – 111 Coors Blvd. NE, Albuquerque, New Mexico 87121

Dear Mr. Friedrich:

This letter is written with regard to unpaid water bills which accrued prior to Smith's obtaining an interest in the above property. According to the City of Albuquerque, the water bills are the responsibility of the property owner pursuant to City Ordinance, Water, Sewers and Streets Section 6-4-12 (a copy is enclosed for your ease of reference) and were not discharged in Furr's bankruptcy proceeding. As the indebtedness pre-dated Smith's interest in the property they are also not Smith's responsibility under the terms of its assignment.

The city has threatened to disconnect water service to the premises in the event the following amounts are not paid immediately:

<u>Account No.</u>	<u>Amount</u>
21-06-2833-9	\$2,784.44
21-25-100-0	\$1,291.12
22-50-684-9	\$ 116.06

Any discontinuance of service or cloud on title would constitute a default under Section 8, Supermarket Lease, dated December 5, 1986, by and between Werner Kindermann, and Furr's Inc., and could potentially expose Mr. Kindermann to substantial damages.

Please consider this letter as Smith's notice of default under the above stated section. Pursuant to Section 28, please be advised you have thirty (30) days in which to cure. I strongly urge you to contact Mr. Robert I. Waldman, Assistant City Attorney at (505) 768-4500, or facsimile at (505) 768-2506, for resolution of this matter.

Sincerely,

SMITH'S FOOD & DRUG CENTERS, INC.

Charlotte K. Wightman  
Director of Property Management

cc: Werner Kindermann  
Daryl Johnson – 008C

Robert I. Waldman  
Steve Peacock – 008C

Wade Williams 001  
Kent Maxfield – 011C

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