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UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re: )  
 ) Case No. 11-01-10779-SA  
FURR'S SUPERMARKETS, INC., )  
 ) Chapter 7  
Debtor )

**MOTION OF EL PASO PROPERTIES CORP. AND JANUS FINANCIAL CORPORATION FOR CONTINUANCE OF HEARINGS ON (i) TRUSTEE'S MOTION TO ASSUME AND ASSIGN EL PASO WAREHOUSE LEASE TO SAFEWAY INC., AND (ii) CHAPTER 7 TRUSTEE'S SECOND MOTION TO EXTEND TIME WITHIN WHICH THE DEBTOR MAY ASSUME OR REJECT THE EL PASO WAREHOUSE LEASE**

El Paso Properties Corp. and Janus Financial Corporation (together, the "Lessor"), by their undersigned counsel, move for an order continuing to October 29 and 30, 2002 (counsel being advised that these dates are available on the Court' calendar and suit the convenience of the Court), the hearings currently scheduled for September 25 and 26, 2002 (collectively, the "Final Hearing") on (i) the "Trustee's Motion to Assume and Assign El Paso Warehouse Lease to Safeway Inc." (the "Assignment Motion"), and (ii) the "Chapter 7 Trustee's Second Motion to Extend Time Within Which the Debtor May Assume or Reject the El Paso Warehouse Lease" (the "Extension Motion" and, together with the Assignment Motion, the "Warehouse Motions"). In support of this request, the Lessor represents as follows:

1. For several months, the Trustee and the Lessor have been engaged in litigation over various issues relating to an unexpired lease (the "Warehouse Lease") for a warehouse and a distribution center in El Paso, Texas (the "Warehouse"). The present posture of this litigation (the "Proceedings"), which is framed by the Warehouse Motions and the Lessor's responses in opposition thereto, can be briefly summarized as follows: the Trustee seeks to assume the Warehouse Lease pursuant to 11 U.S.C. §365 and simultaneously assign it to

Safeway Inc. ("Safeway"), which has offered to pay the Trustee the sum of \$1,400,000 for the assignment of the Lease, subject to certain conditions. The Lessor opposes the assumption and assignment of the Warehouse Lease, asserting among other things that the price offered by Safeway is insufficient to fund a cure of all the defaults under the Warehouse Lease. The Trustee has also requested an extension until December 31, 2002, of the time within which she must assume or reject the Warehouse Lease, and the Lessor opposes the requested extension.

2. By its "Order Arising From Status Conference on Warehouse Motions" filed on July 26, 2002, this Court scheduled the Final Hearing on the Warehouse Motions for September 25 and 26, 2002.

3. The Lessor has been represented throughout the Proceedings by Kirkpatrick & Lockhart LLP ("K&L"). K&L has no conflict with the Lessor.

4. K&L has concluded that, under the Rules of Professional Conduct, it has a conflict of interest with opposing parties who have taken an active interest in the Proceedings, and that its inability to obtain consents from such opposing parties requires K&L to withdraw from its representation of the Lessor in the Proceedings.

5. The Lessor, after investigation and conferences, believes its interests will be best represented by retaining the firm of Krafur Gordon Mott P.C. ("KGM"), of El Paso, Texas, to replace K&L as the Lessor's attorneys in the Proceedings. KGM is willing to undertake this engagement; however, the attorneys at KGM who are most qualified to handle the engagement have preexisting trial commitments for September 25 and 26, 2002. Accordingly, KGM's ability to undertake the engagement is contingent on this Court's entry of an Order continuing the Final Hearing to October 29 and 30, 2002. Upon the entry of such an Order,

KGM will enter its appearance on behalf of the Lessor and K&L will simultaneously file a formal request to withdraw its appearance on behalf of the Lessor pursuant to Local Rule 2091-1.

6. The requested continuance will not prejudice the interests of any party. Indeed, quite apart from the Lessor's need to secure the services of replacement counsel, the continuance will significantly diminish the risk that the parties will incur substantial needless expense in connection with the Final Hearing. Under the terms of Safeway's offer to the Trustee (attached as an Exhibit to the Assignment Motion), Safeway has a ninety day "Inspection Period" during which it can investigate the condition of the Warehouse and related matters. The Lessor's undersigned counsel is advised by counsel for the Trustee that this inspection period began on July 9, 2002, and will extend through October 7, 2002, a date approximately two weeks after the currently scheduled commencement date of the Final Hearing. At any time during this Inspection Period, Safeway may terminate its offer for the Warehouse Lease in its sole discretion, without penalty. Thus, without a continuance of the Final Hearing to a date after expiration of the Inspection Period, the parties may incur substantial expense to try some complex issues of fact and law that may be rendered moot by Safeway's subsequent decision to withdraw its offer.

7. Safeway's proposal is also expressly conditioned on none of the renewal options under the Warehouse Lease having been exercised. This condition cannot be met, because Safeway itself exercised these renewal options on September 21, 1987, at a time when it was the occupant under the Warehouse Lease. So far as the Lessor is aware, Safeway has not formally amended its proposal to waive this condition. The requested continuance will allow Safeway to complete its due diligence before deciding whether to formally amend its proposal to

waive this condition. If Safeway elects not to waive the condition, the parties and the Court may, by virtue of the continuance, be spared an unnecessary trial.

8. As part of its proposal, Safeway agreed to be responsible for all carrying expenses for the Warehouse accruing during the last 45 days of the Inspection Period, including the monthly installment of rent and taxes that will come due at the end of September, prior to the expiration of the Inspection Period. Accordingly, the requested continuance will not impose any burden on the Trustee, the Secured Lenders, or the Lessor in respect of carrying charges for the month of October.

9. The undersigned counsel for the Lessor has conferred with David Thuma (counsel for the Trustee) and Paul Fish (counsel for Heller Financial, Inc. as agent), and is advised that, at this time, neither the Trustee nor the lenders for whom Heller Financial, Inc. acts as agent are able to take a position on the relief requested in this motion.

WHEREFORE, the Lessor respectfully requests this Court to enter an Order substantially in the form annexed hereto, continuing the Final Hearing to October 29 and October 30, 2002, and adjusting all other pre-hearing deadlines accordingly.

Respectfully submitted,

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Attorneys for El Paso Properties Corp.  
and Janus Financial Corporation

August 28, 2002

The undersigned certifies that a copy of the foregoing Motion of El Paso Properties Corp. and Janus Financial Corporation for Continuance of Hearings on (i) Trustee's Motion to Assume and Assign El Paso Warehouse Lease to Safeway Inc., and (ii) Chapter 7 Trustee's Second Motion to Extend Time Within Which the Debtor May Assume or Reject the El Paso Warehouse Lease was served by email and/or fax and by first-class mail on the following persons:

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this 28th day of August, 2002.

