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U.S. BANKRUPTCY COURT  
ALBUQUERQUE N.M.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA

Chapter 11

Debtor.

NOTICE OF DEADLINE TO OBJECT TO THE DEBTOR'S  
MOTION FOR ORDER EXTENDING TIME WITHIN WHICH DEBTOR MAY ASSUME  
OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY

On March 1, 2001, Furr's Supermarkets, Inc. (the "Debtor") filed the attached MOTION FOR ORDER EXTENDING TIME WITHIN WHICH DEBTOR MAY ASSUME OR REJECT UNEXPIRED LEASES OF NONRESIDENTIAL REAL PROPERTY (the "Motion").

Any party who objects to the Motion must file its objection with the Clerk of the Bankruptcy Court, Federal Building and United States Courthouse, 421 Gold Ave. SW., Third Floor, Albuquerque, N.M. 87102 (or P.O. Box 546, Albuquerque, N.M. 87103), **WITHIN TWENTY DAYS AFTER THE DATE OF MAILING OF THIS NOTICE, PLUS THREE DAYS FOR MAIL FOR A TOTAL OF TWENTY-THREE DAYS (i.e., on or before March 26, 2001)**, and serve a copy of the objection on David T. Thuma, Jacobvitz, Thuma & Walker, P.C., 500 Marquette Ave., N.W., Suite 650, Albuquerque, N.M. 87102 and Richard Levin, Skadden, Arps, Slate, Meagher & Flom LLP, 300 South Grand Avenue, Suite 3400 Los Angeles, California 90071-3144. If any objections are timely filed, a final hearing will be held on April 3, 2001, at 1:30, p.m. before the Honorable James S. Starzynski, Federal Building and United States Courthouse, 421 Gold Ave. SW., Second Floor, Albuquerque, N.M. 87102. If no objections are timely filed, an order granting the Motion will be presented for entry without a hearing or further notice.

Date of Mailing: March 1, 2001

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## RELIEF REQUESTED

2. The Debtor seeks an order under Bankruptcy Code § 365(d)(4) extending until August 10, 2001 (the "Extension Period") the time within which it must move to assume or reject its unexpired leases of nonresidential real property, subject to the rights of each lessor to request, upon appropriate notice and motion, that the Court shorten the Extension Period and specify a period of time in which the Debtor must determine whether to assume or reject an Unexpired Lease.

## BASIS FOR RELIEF

3. The Debtor is the lessee under approximately 75 unexpired leases of nonresidential real property (collectively, the "Unexpired Leases"). Most of the Unexpired Leases are for real estate on which the Debtor operates its stores. The Unexpired Leases are integral to the Debtor's continued operations as it seeks to reorganize.

4. The Debtor will soon move to reject the Unexpired Leases related to certain unused property, and it expects that it may to move to reject other Unexpired Leases. But many (if not most) of the Unexpired Leases may prove necessary or desirable to the continued operation of its business.

5. The Debtor will likely seek to assume these Unexpired Leases. Still other Unexpired Leases, while not necessary to the Debtor's operations, may prove to be "below market" leases that may yield value to the estate through their

## APPLICABLE AUTHORITY

8. Bankruptcy Code § 365(d)(4) provides that if the trustee (or debtor in possession) does not assume an unexpired lease within 60 days of the case's commencement, the lease is deemed rejected. That section also provides, however, that the Court may extend the 60-day period for "cause."<sup>2</sup>

9. Although there is no Tenth Circuit authority directly on point, the Second, Fifth, and Ninth Circuits have acknowledged that in large cases, courts routinely extend § 365(d)(4)'s 60-day period for deciding whether to assume or reject.<sup>3</sup> In determining whether "cause" exists for an extension, courts have relied on several factors, including the following:

- (a) whether the case is complex and involves a large number of leases;

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<sup>2</sup>

[I]n a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

11 U.S.C. § 365(d)(4) (emphasis added).

<sup>3</sup> See, e.g., Legacy, Ltd. v. Channel Home Centers (In re Channel Home Centers), 989 F.2d 682, 688-89 (3d Cir. 1993) (affirming second § 365(d)(4) extension to allow debtor to evaluate unexpired leases); In re American Healthcare Management, 900 F.2d 827, 830 (5th Cir. 1990) (affirming third extension); In re Victoria Station, Inc., 875 F.2d 1380, 1384-85 (9th Cir. 1989) (affirming second extension).

the reserved rent for all postpetition periods before rejection.<sup>5</sup> Indeed, § 365(d)(3) grants the landlord's postpetition claims under the lease "automatic" administrative expense status, without the requirement of notice and a hearing.<sup>6</sup> Given this protection, the potential for prejudice to any landlord by an extension of the Debtor's time to assume or reject the Unexpired Leases is remote.

14. In contrast, if the Court does not extend 60-day period, the Debtor will have to determine prematurely whether to assume substantial, long-term liabilities under the Unexpired Leases (potentially creating administrative expense claims) or forfeit benefits associated with some leases, to the detriment of its ability to operate and preserve its business's going-concern value for the benefit of creditors and other parties-in-interest. To prevent this difficult choice, in Nostas Assocs. v. Costich (In re Klein Sleep Prods.) the Second Circuit suggested that bankruptcy courts should, in appropriate cases, extend the § 365(d)(4) deadline until confirmation.<sup>7</sup>

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<sup>5</sup> Towers v. Chickering & Gregory (In re Pacific-Atlantic Trading Co.), 27 F.3d 401 (9th Cir. 1994).

<sup>6</sup> In re Wingspread Corp., 116 B.R. 915, 926 (Bankr. S.D.N.Y. 1990).

<sup>7</sup> 78 F.3d 18, 29-30 (2d Cir. 1996) (suggesting extension until confirmation at which time the debtors' chances of rehabilitation would be clear); see also Burger Boys, 94 F.3d at 760-61 (explaining that a decision to extend time is within the discretion of the bankruptcy court).

(ii) granting such other and further relief as is just and proper.

Dated: Albuquerque, New Mexico  
March 1, 2001

JACOBVITZ THUMA & WALKER  
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