

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

2002 OCT 30 AM 10:54
U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779 SA

Debtor.

Chapter 11

**EQUITY DEVELOPMENT CORPORATION'S FIRST AMENDED
MOTION TO REQUIRE PAYMENT OF ADMINISTRATIVE EXPENSES**

COMES NOW Equity Development Corporation ("EDC"), by and through its counsel of record, Hinkle, Hensley, Shanor & Martin, L.L.P. (Nancy S. Cusack), and for its First Amended Motion to Require Payment of Administrative Expenses states:

1. EDC is a Texas corporation, and is the owner of certain real property located at 1300 South Main, Roswell, New Mexico (hereinafter the "Leased Property").
2. EDC originally leased the Leased Property to Debtor pursuant to a Lease Agreement dated April 24, 1981. Said Lease was to terminate by its terms on or about August 31, 1991. Subsequently, the parties continued with a lease of the Leased Property on a month-to-month basis, at the rate of \$16,694.50 per month, with Debtor responsible for real estate taxes and electricity.
3. Debtor filed a voluntary petition for relief on or about February 8, 2001, and paid its rent to EDC through August 31, 2001.
4. On or about August 23, 2001, Debtor filed a Motion to Reject Certain Unexpired Real Estate Leases, Subleases and Equipment Leases, including EDC's lease. On or about September 6, 2001, an Order was entered by the Court which, among other things, determined that the Debtor was deemed to have surrendered the Leased Property as of August 31, 2001. Notwithstanding such determination, the Order further provided that it did not resolve any issues, claims or defenses

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regarding the allowance, amount or payment of administrative expense claims of any of the Lessors, which include EDC. A true and correct copy of such Order is attached hereto as Exhibit A.

5. Notwithstanding the fact that the lease of the Leased Property was deemed rejected effective as of August 31, 2001, Debtor did not vacate the Leased Property. Located on the Leased Premises were shelves, refrigeration units, bakery equipment and fixtures, deli equipment, refrigerators, meat department equipment, and the like, all used in Debtor's operations as a grocery store, which Debtor owned. In addition, there continued to be located on the Leased Premises certain equipment which Debtor had used in the operation of its grocery store, but which it was leasing from third parties. Debtor did not remove such equipment as of the date that the Lease Agreement was rejected.

6. The existence of such equipment on the Leased Premises precluded EDC from using the Leased Premises or renting it to third parties, notwithstanding the fact that Debtor has ostensibly terminated the lease effective as of August 31, 2001.

7. On or about November 21, 2001, EDC filed a Motion for Payment of Administrative Expense, in which, among other things, it sought allowance of administrative claims for taxes, electricity, rent and roof repair. Debtor's counsel was served with a copy of a response, but failed to file any answer to such motion.

8. On or about December 19, 2001, Debtor's bankruptcy case was converted from a Chapter 11 proceeding to a Chapter 7 proceeding, and a Trustee was appointed.

9. The equipment described in paragraph 5 above continued to remain on the Leased Property.

10. Subsequent to Debtor's conversion of its bankruptcy case from a Chapter 11 case to a Chapter 7 case, Debtor and EDC had some discussion regarding whether the equipment described in paragraph 5 above could be transferred to EDC in partial satisfaction of certain claims which EDC had against the Debtor. However, the parties were never able to reach any agreement regarding that matter.

11. Beginning in January, 2002, EDC renewed its demands on the Trustee to remove the equipment, initially with no response whatsoever from the Trustee. At some point in time, the Trustee again expressed an interest in selling the equipment to EDC, but again, the parties were unable to come to terms regarding such sale.

12. On or about April 24, 2002, the Trustee filed a Motion Seeking Leave to Conduct an Auction Sale of the equipment, which auction sale was to be held on the Leased Premises on May 28, 2002. In that motion, the Trustee represented that as part of the auction process, the auctioneer would remove all store equipment and would leave each store in "broom clean" condition. Prior to filing such motion, the Trustee represented to EDC that it would be impossible to remove the equipment located on the Leased Property prior to May 28, 2002.

13. Based on information and belief, the auction was in fact conducted on May 28, 2002, but the premises was not left in "broom clean" condition. Rather, EDC had to reenter the premises and do substantial work in the form of cleaning and trash removal. Such work was completed by EDC on or about June 10, 2002 at a cost of approximately \$5,000.00.

14. The activities of the Debtor and the Trustee in keeping the equipment on the Leased Property and in conducting the auction there was for the benefit of the Debtor and the Bankruptcy

Estate. As such, pursuant to the provisions of 11 U.S.C. 503, EDC should be awarded an administration claim against the Furr's Bankruptcy Estate.

15. EDC should be entitled to recover as a Chapter 7 administrative expense the following:

- a. Rental for the time period from December 19, 2001 until June 10, 2002, at the rate of \$16,694.50 per month;
- b. Clean-up costs incurred by EDC after the auction in the amount of \$5,000.00;
- c. Real property taxes incurred against the Real Property from December 19, 2001 until June 10, 2002, at the rate of \$806.68 per annum;
- d. Utility expenses for the period from December 19, 2001 until June 10, 2002.

16. EDC should further be entitled to recover as a Chapter 11 administrative expense the following;

- a. Rental for the time period from September 1, 2001 to December 19, 2001 at the rate of \$16,694.50 per month;
- b. Taxes for the period from February 8, 2001 until December 19, 2001 at the rate of \$805.68 per month;
- c. Utility charges incurred from September 1, 2001 until December 19, 2001.

17. Debtor should be required to make such payment to EDC immediately.

18. Counsel for the Trustee has been contacted regarding this matter and has refused to consent to the relief requested herein.

WHEREFORE, after notice and hearing, EDC prays that this Court enter its Order:

1. Allowing Chapter 7 administrative expenses described above.

2. Allowing EDC's Chapter 11 administrative expenses in the amounts described above.
3. Requiring that the Trustee pay such expense within ten (10) days from the date of entry of the Court's Order; and
4. For such other and further relief as this Court may deem just and proper.

HINKLE, HENSLEY, SHANOR
& MARTIN, L.L.P.

Nancy S. Cusack
Nancy S. Cusack
P. O. Box 2068
Santa Fe, NM 87504-2068
(505) 982-4554

Attorneys for Equity Development Corp.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2002 a copy of the foregoing pleading was mailed via first-class U.S. mail, postage prepaid to the following individuals:

David Thuma, Esq.
Jacobvitz, Thuma & Walker, P.C.
500 Marquette, N.W.. Suite 650
Albuquerque, NM 87102

U.S. Trustee
P. O. Box 608
Albuquerque, NM 87103-0608

Nancy S. Cusack
Nancy S. Cusack

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA
Chapter 11

Debtor.

**ORDER GRANTING IN PART DEBTOR'S MOTION TO REJECT CERTAIN
UNEXPIRED REAL ESTATE LEASES, SUBLEASES, AND EQUIPMENT
LEASES**

THIS MATTER came before the Court on the debtor Furr's Supermarkets, Inc.'s (the "Debtor's") Motion to Reject Certain Unexpired Real Estate Leases, Subleases, and Equipment Leases filed August 23, 2001 (Doc. No. 903) (the "Motion") and the Court, having held a final hearing on the Motion and the objections thereto and being otherwise duly advised in the premises, FINDS as follows:

(a) The Debtor commenced this case by filing a voluntary petition on February 8, 2001 in this Court under chapter 11 of title 11 of the United States Bankruptcy Code. The Debtor continues to operate its business and manage its properties as debtor-in-possession under Bankruptcy Code §§ 1107(a) and 1108;

(b) The Debtor filed the Motion on August 17, 2001;

(d) Timely objections to the Motion were filed by Adrian Baca, Wellershausen Family Trust, International Food Service Holding, Ltd., Finova Capital Corporation, MDFC Equipment Leasing Corporation, Compaq Financial Services Corporation, and Petroleum Capital.

EXHIBIT

A

(e) The requirements of Bankruptcy Code §365 have been satisfied with respect to the relief granted by this Order; and

(f) entry of this Order, without further notice or hearing, is appropriate.

THEREFORE, THE COURT ORDERS:

1. Definitions. As used in this Order, the following terms are defined as follows:

a. The "Closed Stores" means the ²⁸~~25~~ grocery stores more particularly described in Exhibit A hereto. ATT

b. The "Closed Store Leases" means the ²⁸~~25~~ real property leases for the Closed Stores; JTT

c. The "Equipment Leases" are the personal property leases for equipment and other personal property located at the Closed Stores, more particularly described in Exhibit C hereto; provided, however, that the Equipment Leases do not include any leases between the Debtor and any of Finova Capital Corporation, MDFC Equipment Leasing Corporation, Compaq Financial Services Corporation, and Petroleum Capital;

d. The "Rejected Leased Property" means the real and personal property leased to the Debtor under the Closed Store Leases and the Equipment Leases; and

e. The "Subleases" means the subleases for the Closed Stores, more particularly described in Exhibit B attached hereto;

2. The Debtor's rejection of the Closed Store Leases, Equipment Leases, and Subleases is approved, subject to the terms and provisions of this Order and, with respect to

the Equipment Leases, subject to the terms and provisions of the Court's August 31, 2001 Stipulated Order Conditionally Approving Debtor's Settlement of Certain Equipment Lease Claims.

3. For all landlords or lessors other than International Food Service Holding Ltd., the Debtor is deemed to have surrendered such Rejected Leased Property effective as of August 31, 2001.

4. The automatic stay provided by 11 U.S.C. §362(a) is modified as to the Closed Store Leases, the Equipment Leases, the Subleases, and the Rejected Leased Property to permit the lessors to take possession of and/or sell the Rejected Leased Property.

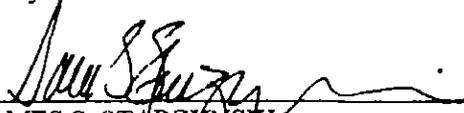
5. Determination of the effective date of the Debtor's rejection of the Closed Store Leases is reserved and all arguments with respect to the effective date are preserved. Notwithstanding the foregoing, for all landlords or lessors other than International Food Service Holding Ltd., the outside effective date of such rejection shall be August 31, 2001, without prejudice to any party to argue for an earlier effective date.

6. This Order does not resolve any issues, claims and defenses regarding allowance, amount, or payment of administrative expense claims, if any, of the lessors of the Rejected Leased Property; all such issues, claims and defenses being preserved without prejudice.

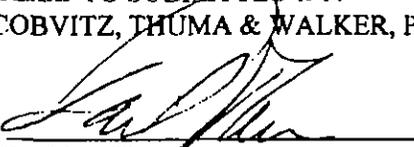
7. The Motion concerning the store leases, subleases, and equipment leases for store ## 877 and 909 will be addressed in a separate order, as the Debtor currently is negotiating with Safeway, Inc. to assume such leases and subleases. On or before September

11, 2001, the Debtor will present an order rejecting the store leases, subleases, and equipment leases for such stores, or may withdraw the Motion with respect to such stores and file a motion to assume the leases and subleases for such stores and assign them to Safeway, Inc.

8. The Motion concerning the store lease of store #954, leased by Adrian Baca, is addressed in a separate order. This Order, however, shall deal with any Equipment Leases and/or Subleases in store #954, all of which are rejected as set forth herein.


JAMES S. STARZYNSKI
U.S. Bankruptcy Judge

AGREED TO SUBMITTED BY:
JACOBVITZ, THUMA & WALKER, P.C.

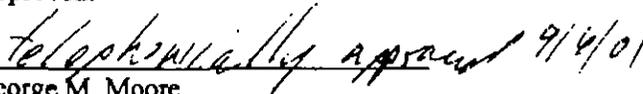
By: 
David T. Thuma
500 Marquette, NW
Suite 650
Albuquerque, NM 87102
(505) 766-9272
Attorneys for the Debtor

I hereby certify that a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered or mailed to the listed counsel and parties on:

SEP 06 2001

Mary B. Anderson

Approved:


George M. Moore
P.O. Box 159
Albuquerque, New Mexico 87103
(505) 242-1218
(505) 242-2551
Attorney for International Food Service Holding, Ltd.

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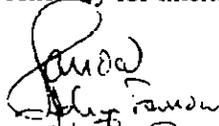

Mary B. Anderson
Atty for Safeway 169 LLC
300 25700
Albuquerque NM 87196 505/281-8300

EXHIBIT A

I. Closed Store Leases

#801	700 North Main Las Cruces, NM	City of Las Cruces P.O. Box 20000 Las Cruces, NM 88004
#811	1700 E. 20th Street Farmington, NM	FKH Farmington Partners 559 S. Palm Canyon Drive #B-212 Palm Springs, CA 92263
#812	7800 Enchanted Hills Boulevard Rio Rancho, NM	International Food Service Holdings 411 Central Avenue, NW Albuquerque, NM 87102
#860	4001 E. Main St. Farmington, NM	Pennington Partnership 401 W. Broadway Bloomfield, NM 87413
#862	701 East Main, S.E. Los Lunas, NM	Los Lunas S.C. P.O. Box 91657 Albuquerque, NM 87199
#866	1720 Bridge SW Albuquerque, NM	Floho Partners 722 Camino Ocaso Del Sol Santa Fe, NM 87501
#868	201 San Pedro SE Albuquerque, NM	Fox Plaza Partners 2325 San Pedro, NE, #2A Albuquerque, NM 87110
#880	108 Juan Tabo NE Albuquerque, NM	W. & W. Properties 150 N. Santa Anita, #645 Arcadia, CA 91006
#883	4201 Central NW Albuquerque, NM	Atrisco Central Co-Tenants c/o PMR America West 800 Newport Center Drive, #300 Newport Beach, CA 92660

#894	206 Mills Avenue Las Vegas, NM	Mills Plaza, L.L.C. Attn Mark Ross 21820 Burbank Blvd, #120 Woodland Hills, CA 91367
#898	102 Caldwell Belen, NM	Del Rio Plaza 2325 San Pedro, NE #2-A Albuquerque, NM 87110
#905	205 Highway 70, West Ruidoso, NM	Furr's 4 LLC 1818 N. Farwell Ave Milwaukee, WI 53202
#907	1602 West Main Artesia, NM	Artesia Partners, Ltd. 3300 S. Parker Road, #500 Aurora, CO 80014
#908	900 W. 2 nd Street Roswell, NM	12 TSM Corp 802 West Street Wilmington, DE 19801
#911	1300 South Main Roswell, NM	Equity Development Corp 519 Gibson St Seagoville, TX 75159
#926	5111 Fairbanks El Paso, TX	Dixie Scaquist 2015 Lake Drive Taylor, TX 7574
#927	9348 Dyer El Paso, TX	Floho Partners 722 Ocaso Del Sol Santa Fe, NM 87501
#929	333A N. Yarbrough El Paso, TX	Pebble Hills JV Limited Partnership c/o Ray Maloohy 804 Cherry Hills Lane El Paso, TX 79912
#932	3100 Lee Trevino El Paso, TX	Wellerhausen Family Trust Zum Sonnenblick 1 D-63667 Nidda
#938	1590 George Dieter El Paso, TX	Furrs 9 LLC 1818 N. Farwell Ave Milwaukee, WI 53202
#949	809 W. Pierce Carlsbad, NM	Floho Partners 722 Ocaso Del Sol Santa Fe, NM 87501

#950	11705 Montwood Drive El Paso, TX	River Oaks Properties, Ltd. One Helen of Troy Plaza El Paso, TX 79912
#952	951 N. Resler Drive El Paso, TX	River Oaks Properties, Ltd. One Helen of Troy Plaza El Paso, TX 79912
#953	8115 North Loop Drive El Paso, TX	Centeramerica Property Trust, L.P. 3901 Bellaire Blvd Houston, TX 77025
#954	321 S. Main Anthony, TX	La Feria Park N Shop Inc 500 Wild Willow El Paso, TX 79922
#966	4340 W. Illinois Midland, TX	Westwood Village Shopping Center. c/o TGAAR Prop 3300 N "A" Street, Bldg Two, #10 Midland, TX 79705
#967	2208 Big Spring Road Midland, TX	Trason Texas L.P. 325 University Ave. Syracuse, NY 13210
#989	1210 Main Street Andrews, TX	Claus Doelling Fuchsberger Damm 2 25335 Elmshorn Germany