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U.S. DISTRICT COURT
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO**

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

**METROPOLITAN LIFE INSURANCE COMPANY'S MOTION TO APPROVE
STIPULATION AND CONSENT ORDER APPROVING PARTIAL RELEASE OF
ESCROW AMOUNT UNDER ASSET PURCHASE AGREEMENT BETWEEN
FLEMING COMPANIES, INC., HELLER FINANCIAL, INC., BANK OF
AMERICA, N.A., FLEET CAPITAL CORPORATION
AND METROPOLITAN LIFE INSURANCE COMPANY**

Metropolitan Life Insurance Company ("MetLife"), by and through its undersigned attorneys, Bingham McCutchen LLP and J.D. Behles & Associates, a Commercial Law Firm, hereby submits its Motion to Approve Stipulation and Consent Order (the "**Motion**") seeking approval of a Stipulation and Consent Order entered into between and among Fleming Companies, Inc. ("**Fleming**") and Erica, Inc. d/b/a Food Basket ("**Erica**") on the one hand, and MetLife, Fleet Capital Corporation ("**Fleet**"), Bank of America, N.A. ("**BofA**"), and Heller Financial, Inc., in its individual capacity ("**Heller**") (Heller, BofA and Fleet are collectively referred to herein as the "**Bank Lenders**"), Heller in its capacity as agent for itself, Fleet and BofA under that certain Prepetition Credit Facility dated December 21, 2000, and Heller, in its capacity as agent for itself, Fleet, BofA and MetLife under the Final Order (1) Authorizing Debtor to

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Obtain Secured Financing, (2) Granting Adequate Protection, and (3) Granting Other Relief dated March 14, 2001 (as defined herein)(the “**DIP Agent**”)(the Bank Lenders and MetLife, together with their respective successors, assigns, and transferees are collectively referred to herein as the “**Lenders**”). on the other hand, and states as follows:

1. On February 8, 2001 (the “**Petition Date**”), Furr’s Supermarkets, Inc. (the “**Company**” or the “**Debtor**”), filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C § 101 *et seq.* (the “**Bankruptcy Code**”).

2. On July 3, 2001, the Court entered an order approving the sale of a substantial portion of the Debtor’s assets to Fleming or its assignees or designees in accordance with the terms and conditions of the Asset Purchase Agreement between the Company and Fleming dated June 25, 2001 (the “**Purchase Agreement**”), which sale of assets closed on August 31, 2001.

3. The Purchase Agreement provides for, among other things, the escrow by the Debtor of two million dollars (\$2,000,000) of the Cash Consideration¹ associated with the sale for one year following the Closing Date (the “**Escrow Amount**”), with said Escrow Amount to be applied, if at all, in accordance with the indemnification provisions of the Purchase Agreement.

¹ All capitalized terms shall have the meanings ascribed to such terms in the Purchase Agreement.

4. On December 19, 2001, the Debtor's case was converted to a case under chapter 7 of the Bankruptcy Code, and Yvette J. Gonzales was thereafter appointed as trustee of the chapter 7 estate in the above-referenced bankruptcy case (the "**Trustee**").

5. On July 25, 2002, the Court entered an order (the "**Global Settlement Order**") approving a global compromise and settlement between the Trustee and the Lenders which provided for, among other things, the complete general assignment to the Lenders of all right, title and interest of the Estate in and to the Escrow Amount.

6. On July 26, 2002, Erica, by and through its counsel, Braccwell & Patterson, L.L.P., provided notice to the Debtors, the Trustee and the Lenders of its assertion of a Claim for indemnification against the Debtors and the Trustee, and the Escrow Amount, in the amount alleged to be in excess of \$62,000.

7. On August 2, 2002, the Lenders, as successors-in-interest to the Debtors with regard to the Escrow Amount, provided notice to Erica in accordance with the terms of the Purchase Agreement that they contest the Claim of Erica in its entirety and reserve all rights and remedies with respect thereto.

8. On August 27, 2002, Fleming, by and through its counsel, McAfee & Taft A Professional Corporation, provided notice to the Debtors, the Trustee and the Lenders of its assertion of Claims for indemnification against the Debtors and the Trustee, and the Escrow Amount, in an undetermined amount alleged to be in excess of \$200,000.

9. On September 23, 2002, the Lenders, as successors-in-interest to the Debtors with regard to the Escrow Amount, provided notice to Fleming in accordance with the terms of the Purchase Agreement that they contest the Claims of Fleming in their entirety and reserve all rights and remedies with respect thereto.

10. The parties hereto have conducted extensive arm's-length negotiations and have determined to enter into an agreement authorizing the partial release of the Escrow Amount to the Lenders in accordance with the terms and conditions herein (all such terms and provisions, the "**Agreement**"). The Agreement is memorialized in a Stipulation and Consent Order (the "**Stipulation and Consent Order**") attached hereto and made a part hereof.

11. The Purchase Agreement provides this Court with exclusive jurisdiction to resolve all disputes regarding the indemnification procedures set forth in the Purchase Agreement and the respective rights of the parties to the Escrow Amount

12. In accordance with the terms of the Stipulation and Consent Order (as more completely set forth therein), Fleming and Erica releases and waives any and all claims to and interest in the Escrow Amount including any interest accrued or accruing thereon except for the amount of two hundred and fifty thousand dollars (\$250,000) (the "**Post Agreement Escrow Amount**"). The Stipulation and Consent Order provides that the Post Agreement Escrow Amount shall be held by the Trustee or the Estate in escrow in accordance with the terms of the Purchase Agreement, subject to further order of this Court. The parties each reserve all rights and remedies that they may have under the

Purchase Agreement with regard to the Post Agreement Escrow Amount. Nothing in the Stipulation and Consent Order shall constitute a waiver of any such rights and remedies. Furthermore, the Stipulation and Consent Order provides that all escrowed funds currently held by the Trustee or the Estate constituting the Escrow Amount in excess of the Post Agreement Escrow Amount of \$250,000, including any interest accrued and accruing thereon, shall be paid immediately to the Lenders in their capacities as pre-petition creditors. The Stipulation and Consent Order also requires all payments to be made to the Lenders to be deposited into the segregated account designated by the Trustee to fund the Carve-Outs defined in and provided for in the Global Settlement Order, which payments shall be in partial satisfaction of the Lenders' obligations thereunder with respect to the Carve-Outs, or as otherwise directed by the Lenders.² In no event will Fleming or Erica have any liability for or with respect to any escrowed funds released pursuant to the Stipulation and Consent Order.

13. The Agreement is not binding upon the parties unless and until the Stipulation and Consent Order is executed by counsel for each of the parties, and approved by the Court after notice and a hearing. If this Settlement is not so executed and approved in full, then no party thereto is bound thereby.

² The Lenders agree that the funds deposited into the Trustee's segregated account to partially fund the Carve-Outs required under the Global Settlement Order, or as otherwise directed to be paid by the Lenders to or for account of the Lenders, shall be subject to characterization and allocation in accordance with the Intercreditor Agreement (as defined in the Final DIP Order) and the Co-Lender Agreement dated as of March 14, 2001.

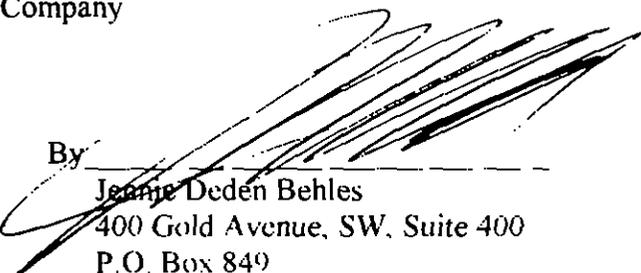
WHEREFORE, MetLife respectfully requests that the Court (i) grant this Motion approving and "so ordering" the Stipulation and Consent Order in its entirety, and (ii) grant MetLife such other and further relief as the Court deems to be just and proper.

Dated: November 7, 2002
Albuquerque, New Mexico

Respectfully submitted,

J.D.Behles & Associates, a Commercial Law Firm,
Attorneys for Metropolitan Life Insurance
Company

By



Jennie Deden Behles
400 Gold Avenue, SW, Suite 400
P.O. Box 849
Albuquerque, NM 87103-0849
Phone: (505) 243-9756
Fax: (505) 243-7262

and

Jonathan B. Alter
Steven R. Savoia
BINGHAM McCUTCHEN LLP
399 Park Avenue
New York, NY 10022
Phone: (212) 318-7700
Fax: (212) 752-5378

I HEREBY CERTIFY that a true
and correct copy of the foregoing
pleading was mailed to the following
this 2 day of ~~October~~, 2002
November 12, 2002

Donald F. Harris, Esq.
Special Assistant Attorney General
New Mexico Taxation & Revenue Department
PO Box 8485
Albuquerque, NM 87108

David S. Heller, Esq.
Josef S. Athanas, Esq.
Latham & Watkins
Sears Tower, Suite 5800
233 South Wacker Drive, 58th Floor
Chicago, IL 60606

Paul M. Fish, Esq.
Modrall, Sperling, Rochl, Harris & Sisk, P A
P.O. Box 2168
500 4th St. NW
Albuquerque, NM 87103-2168

Ron Andazola, Esq.
United States Trustee
P.O. Box 608
Albuquerque, NM 87103-0608

Robert H. Jacobvitz, Esq.
Jacobvitz, Thuma & Walker, P.C.
500 Marquette NW #650
Albuquerque, NM 87102

Louis J. Price
J. Michael Nordin
McAfee & Taft
A Professional Corporation
10th Floor, Two Leadership Square
211 North Robinson
Oklahoma City, OK 73102-7103

John A. Ferguson, Jr.
Bracewell & Patterson, L.L.P.
800 One Alamo Center
106 S. St. Mary's Street
San Antonio, TX 78205-3603

this 2 day of Nov October, 2002.

By

Jennie Dechen Behles