

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, NM

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 7-01-10779-SA
Chapter 7

Debtor.

**TRUSTEE'S MOTION TO (I) AUTHORIZE PAYMENT OF RECOVERED
MISDIRECTED FUNDS TO SAFEWAY INC. AND (II) APPROVE SALE OF
REMAINDER INTEREST FOR \$15,000**

Yvette J. Gonzales, the Chapter 7 Trustee in the above-captioned bankruptcy case (the "Trustee"), requests Court authority to (i) pay to Safeway Inc. certain funds, which will be recovered from Sunway Associates ("Sunway") and which were misdirected to Sunway by the Debtor in possession, and (ii) sell a certain remainder interest in real property to Sunway for \$15,000, and in support hereof states:

1. On February 8, 2001, Furr's Supermarkets, Inc. (the "Debtor") filed a voluntary petition in this Court under chapter 11 of title 11 of the United States Bankruptcy Code.
2. On August 31, 2001, the Court entered its Order Approving Debtors' Assumption and Assignment of Unexpired Leases (the "Assignment Order"). As reflected in the Assignment Order, Surway Associates Ltd. ("Surway") was the landlord for former store 945. The lease for store 945 was assigned to Safeway Inc.
3. Also, on August 31, 2001, the Order Resulting from Debtor's Notice of Proposed Cure Amounts was entered (the "Cure Order"). Pursuant to the Cure Order, the cure amounts to be paid by the Debtor to effect the assignments under the Assignment Order were approved.
4. The cure amounts to be paid to Surway for the assignment of Store 945 to Safeway Inc. included \$68,792.42 for rent and common area maintenance and \$61,412.41 for 2000 real estate

2033

taxes. The Debtor as debtor in possession inadvertently paid the \$68,792.42 amount to Sunway instead of Surway.

5. On December 19, 2001, the Debtor converted its Chapter 11 case to a case under Chapter 7 of the Bankruptcy Code. The Trustee was appointed on that date.

6. In 2002, Safeway Inc. purchased the real property underlying Store 945 from Surway. In connection with the transaction, the parties discovered that Surway had never received the \$68,792.42 cure payment. Upon further investigation, it was discovered that Furr's had mistakenly sent the payment to Sunway.

7. The Trustee undertook to correct the error. The Trustee was successful in obtaining Sunway's agreement to repay the \$68,792.42 (the "Returned Payment").

8. Since Safeway Inc. paid the unpaid taxes at closing of its purchase from Surway, Safeway is subrogated to the rights of Surway or otherwise entitled to paid the Returned Payment.

9. By this Motion, the Trustee seeks authority to pay the Returned Payment to Safeway Inc. The Trustee believes that such payment is necessary and appropriate to correct the mistake. If the mistake had not been made, Safeway Inc. or its predecessor in interest would have received the funds. Payment of the Returned Payment to Safeway will also avoid any administrative or post-petition setoff claims that Safeway Inc. might have otherwise asserted.

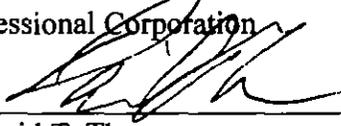
10. In a related matter, the Trustee seeks Court authority to sell to Sunway a certain remainder interest in a parcel of real property in Albuquerque, New Mexico. The purchase price of \$15,000 is fair and reasonable, and represents the fair market value of the remainder interest.

11. The proposed sale of the remainder interest to Sunway, as well as Sunway's agreement to return the Returned Payment, are set forth in the letter agreement attached hereto as Exhibit A (the "Letter Agreement"). Safeway Inc. has also agreed to the sale of the remainder

interest to Sunway, which remainder interest involves a leasehold otherwise assigned to Safeway Inc., provided that both transactions contemplated by the Letter Agreement are approved by the bankruptcy court and close. The Trustee thus asks that the Court approve the Letter Agreement and the transactions contemplated thereunder.

WHEREFORE, the Trustee respectfully requests that the Court approve the payment of the Returned Payment to Safeway Inc., approve the sale of the remainder interest to Sunway for \$15,000, approve the Letter Agreement and the transactions contemplated thereunder, and grant the Trustee all other just and proper relief.

JACOBVITZ THUMA & WALKER
a Professional Corporation

By: 

David T. Thuma
500 Marquette N.W., Suite 650
Albuquerque, New Mexico 87102
(505) 766-9272
(505) 766-9287 (fax)
Attorneys for the Chapter 7 Trustee

This certifies that a copy of the foregoing was
served by first class mail on:

United States Trustee
P.O. Box 608
Albuquerque, NM 87103

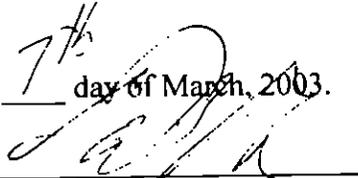
Paul M. Fish
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Albuquerque, NM 87102

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Jonathon Alter
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One State Street
Hartford, CT 06103

Jennifer Gore
Andrews & Kurth
600 Travis, Suite 4200
Houston, TX 77002

this 7th day of March, 2003.



David T. Thuma

March 6, 2003

David T. Thuma
Jacobvitz, Thuma & Walker
500 Marquette NW, Suite 650
Albuquerque, New Mexico 87102

Re: Former Furr's Store No. 877; 2910 Juan Tabo Boulevard, Albuquerque, NM

Dear David:

This letter will confirm our conversation wherein we expressed our client Sunway Associates' ("Sunway's") offer to acquire the remainder interest in the land held in the name of Furr's Supermarkets, Inc. created by that certain warranty deed recorded November 16, 1982 in Book D 172-A, page 719 as Document No. 82-59794 in the deed records of Bernalillo County, New Mexico upon the terms set forth herein.

Our client will pay \$15,000 for the interest, and also pay the recording costs and any transfer taxes imposed upon the recording of the deed. In consideration thereof, the Chapter 7 trustee, acting on behalf of Furr's Supermarkets, Inc., would convey the remainder interest to our client by quitclaim deed. The conveyance would be subject to obtaining bankruptcy court approval.

In connection with the foregoing, and as additional consideration, Sunway will also return to the bankruptcy estate the sum of \$68,792.42 (the "Returned Payment"), which was mistakenly sent to Sunway by Furr's on or about August 31, 2001. Upon approval of the transactions contemplated under this letter agreement, and simultaneously with the delivery of the warranty deed and the \$15,000 purchase price, Sunway will pay the Returned Payment to the Chapter 7 trustee, to be disposed of as ordered by the Court.

If the foregoing accurately reflects our understanding, please sign a copy of this letter in the space provided below.

We look forward to hearing from you shortly.

Sincerely,

William W. Post

WWP/pj

EXHIBIT

A

David T. Thuma
March 6, 2003
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Agreed To:

JACOBVITZ THUMA & WALKER
A Professional Corporation

By: _____
David T. Thuma
500 Marquette N.W., Suite 650
Albuquerque, New Mexico 87102
(505) 766-9272
(505) 766-9287 (fax)
Counsel for the Chapter 7 Trustee

Dated: _____