

IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT  
ALBUQUERQUE, N.M.

IN RE:  
  
FURR'S SUPERMARKETS, INC.,  
INC.,  
  
DEBTOR.

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§  
§  
§  
§

NO. 11-01-10779-SA  
  
Chapter 11

**SUPPLEMENT TO  
RESPONSE TO TRUSTEE'S MOTION FOR PARTIAL SUMMARY  
JUDGMENT ON TGAAR, INC.'S MOTION FOR PAYMENT  
OF ADMINISTRATIVE EXPENSES  
AND  
TGAAR'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

COMES NOW, TGAAR PROPERTIES, INC., d/b/a WESTWOOD VILLAGE SHOPPING CENTER ("TGAAR Properties") and TGAAR West Texas, Inc. ("TGAAR West Texas") (collectively referred to as "TGAAR") and, pursuant to Bankruptcy Rule 7056 and Fed. R. Civ. Proc. 56, file this Supplement to Response To Trustee's Motion for Partial Summary Judgment on TGAAR, Inc.'s Motion for Payment of Administrative Expenses and TGAAR's Cross-Motion for Partial Summary Judgment (referred to as the "Response/MPSJ"), would show unto the Court as follows:

**I.**

**BACKGROUND**

1. On October 10, 2002, the Chapter 7 Trustee filed its Motion for Partial Summary Judgment on TGAAR's Motion for Payment of Administrative Expenses.
2. On October 30, 2002, TGAAR filed its Response to the Chapter 7 Trustee's Motion for Partial Summary Judgment and TGAAR's Cross-Motion for Partial Summary Judgment.

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## II.

### MITIGATION OF DAMAGES

3. Subsequent to October 30, 2002, TGAAR mitigated its damages by leasing a portion of Store #966 in Midland, Texas.

4. As a result of the execution of such lease agreement, TGAAR's damages for the period after May 1, 2003, have been reduced.

5. Paragraph IV.1.c of TGAAR's Response/MPSI (p.12) provides as follows:

#### **IV. SUMMARY OF ADMINISTRATIVE EXPENSE CLAIMS**

**1. The administrative expense claims made by TGAAR are summarized as follows:**

**c. Chapter 7 Administrative Expense – Post-Petition Lease Obligation. For the five (5) years of the extended Lease term (a post-petition obligation), the amount of rent under the terms of the Lease totals \$1,142,626.20(60 mo. x \$19,043.77/mo.) plus estimated ad valorem taxes of \$165,000.00 (5 yrs. x \$33,000.00). TGAAR should be allowed a Chapter 7 administrative expense claim of \$1,307,626.20 for the 5-year period of the post-petition extension of the Lease. At the very least, TGAAR should be allowed a Chapter 7 administrative expense claim of \$131,837.35 (\$19,043.77 x 12 mo. x 184/365 + \$33,000.00 x 184/365) for the 184 days during 2002 (January 1, 2002 to July 3, 2002) that the Chapter 7 Trustee actually used and possessed Store #966 to store and protect the equipment. (Affidavit ¶31.c.)**

6. Due to the subsequent event of leasing a portion of Store #966 and the resulting mitigation of damages, the second sentence of ¶IV.1.c. (underlined), is no longer accurate and should not be considered for purposes of the Cross-Motion for Partial Summary Judgment. Stated alternatively, due to the leasing of a portion of Store #966, the damages for the period after July 3, 2003, the date the Chapter 7 Trustee ceased to actually use and possess Store #966 have been mitigated and are thus overstated in the Cross-Motion for Partial Summary Judgment.

7. TGAAR withdraws its request for the Court to grant summary judgment on the amount of damages TGAAR incurred after July 3, 2002 (the date the Chapter 7 Trustee ceased usage of Store #966).

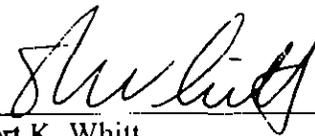
8. Paragraph V.3. of the Conclusion is amended as follows:

**3. Chapter 7 Administrative Expense – Post-Petition Lease Obligation. TGAAR should be allowed a Chapter 7 administrative expense claim of \$131,837.35 ( $\$19,043.77 \times 12 \text{ mo.} \times 184/365 + \$33,000.00 \times 184/365$ ) for the 184 days during 2002 (January 1, 2002 to July 3, 2002) that the Chapter 7 Trustee actually used and possessed Store #966 to store and protect the equipment. TGAAR should be allowed a Chapter 7 (or Chapter 11) administrative expense claim for the remainder of the five years of the extended Lease Term, with the amount to be determined at the trial of this matter.**

Dated this 12<sup>th</sup> day of March, 2003.

Respectfully submitted,

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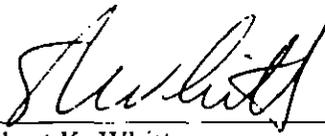
**ATTORNEY FOR TGAAR PROPERTIES, INC.,  
d/b/a WESTWOOD VILLAGE SHOPPING  
CENTER and TGAAR WEST TEXAS, INC.**

**CERTIFICATE OF SERVICE**

I certify that on the 12<sup>th</sup> day of March, 2003, I served a copy of the foregoing pleading to the following persons via e-mail and regular mail:

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Robert K. Whitt