



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 Consideration<sup>1</sup> 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.

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**").

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<sup>1</sup> All capitalized terms shall have the meanings ascribed to such terms in the Purchase Agreement.

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, Bracewell & Patterson, L.L.P., provided notice to the Debtor, the Trustee and the Lenders of its assertion of a Claim under the Purchase Agreement for indemnification against the Debtor and the Trustee, and the Escrow Amount, in an amount alleged to be in excess of \$62,000.

7. On August 2, 2002, the Lenders, as successors-in-interest to the Debtor 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 Debtor, the Trustee and the Lenders of its assertion of Claims under the Purchase Agreement for indemnification against the Debtor 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 Debtor 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 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.

11. After extensive arm's-length negotiations among the Lenders, Fleming and Erica, the parties entered into an agreement authorizing the partial release of the Escrow Amount to the Lenders in accordance with the terms and conditions of a 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 dated on or about November 13, 2002 (the "**First Stipulation and Consent Order**").

12. In accordance with the terms of the First Stipulation and Consent Order (as more completely set forth therein), Fleming and Erica released and waived 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**") and acknowledged that they have no claims against the Trustee or Estate for which the Debtor agreed to indemnify them under the Purchase Agreement. The First Stipulation and Consent Order provided 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 reserved all rights and remedies that they may have under the Purchase Agreement with regard to the Post Agreement Escrow Amount.

13. On or about November 20, 2002, this Court entered an Order approving and authorizing the First Stipulation and Consent Order. In accordance with the terms thereof, the Clerk of the Court transferred the Escrow Amount (except for the Post Agreement Escrow Amount), at the direction of the Lenders, to the Trustee, in partial satisfaction of the Lenders' obligations with respect to the Carve-Outs defined in and provided for in the Global Settlement Order.

14. On April 1, 2003, Fleming filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Fleming Bankruptcy Case**").

15. The Lenders, Fleming and Erica have conducted further arm's-length negotiations and have determined to enter into an agreement authorizing the release of the Post Agreement 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 Approving Final 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 dated September \_\_, 2003 (the "**Stipulation and Consent Order**") attached hereto and made a part hereof.

16. In accordance with the terms of the Stipulation and Consent Order (as more completely set forth therein), Fleming and Erica release and waive any and all claims to and interest in the Post Agreement Escrow Amount including any interest accrued or accruing thereon (the “**Post Agreement Escrow Amount**”). The Stipulation and Consent Order provides that all escrowed funds currently held by the Trustee or the Estate constituting the Post Agreement Escrow Amount, including any interest accrued and accruing thereon, less the fees accrued to the date of transfer to be paid to the Clerk administering the escrowed funds, shall be paid immediately to the Lenders in their capacities as pre-petition creditors.<sup>2</sup> In no event will the Trustee, Fleming or Erica have any liability for or with respect to any escrowed funds released pursuant to the Stipulation and Consent Order.

17. 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 Stipulation and Consent Order is not so executed and approved in full, then no party thereto is bound thereby. To the extent required by law, the Agreement is not binding upon Fleming absent the additional approval by the U.S. Bankruptcy Court in connection with the Fleming Bankruptcy Case.

18. Notice of this Motion has been provided to counsel for the Lenders, Fleming, Erica, the Trustee, the State of New Mexico and the Office of the United States

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<sup>2</sup> The Lenders agree that the funds 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 various rights and agreements of the Lenders.

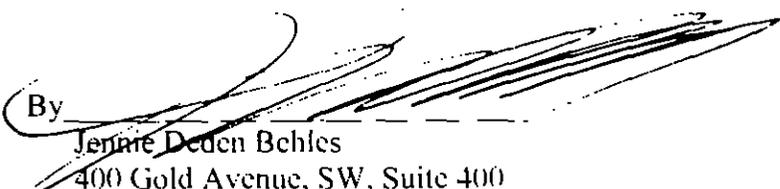
Trustee, which constitute the parties potentially affected by this Motion. The Lenders respectfully submit that such notice is appropriate under the circumstances.

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: September 1, 2003  
Albuquerque, New Mexico

Respectfully submitted,

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I HEREBY CERTIFY that a true  
and correct copy of the foregoing  
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this 11 day of September, 2003.

By:   
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