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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: (No Hearing Required)
FURR'S SUPERMARKETS, INC. Case No. 7-01-10779-SA
Debtor. Chapter 7

Notice of Transfer of Claim Pursuant to Fed. R. Bankr. P. 3001(c)

PLEASE TAKE NOTICE that all right, title and interest in and to the claim described below has been transferred:

1. Person or entity to whom the claim has been transferred ("Substitute Creditor"):
Name: Metropolitan Life Insurance Company
Telephone Number: (973) 355-4798
Address: 10 Park Avenue
P.O. Box 1902
Morristown, NJ 07962
Attn: Judy Wolf-Weiker
2. Date of Transfer of Claim: December 29, 2003
3. Type of Claim: Secured Priority General Unsecured
4. Amount of Claim: See Exhibit A
5. Date of Filing Proof of Claim: August 17, 2001
6. Date of Transfer of Claim: December 29, 2003
7. Person or entity who filed the claim ("Original Creditor"):
Name: Heller Financial, Inc. on its own behalf and as Agent for Bank of America, N.A.
and Fleet Capital Corporation
Telephone Number: (312) 441-7035
Address: Heller Financial, Inc.
c/o GE Capital
500 W. Monroe
Chicago, IL 60661
Attn: Patrick Hayes

2290
3000

8. Attorney for Original Creditor, as set forth on Proof of Claim:

Name: David S. Heller, Esq.
Telephone Number: (312) 876-7700
Address: Latham & Watkins
Suite 5800, Sears Tower
Chicago, Illinois 60606

9. A true and correct copy of the Proof of Claim originally filed is attached hereto as "Exhibit A". True and correct copies of the documents evidencing the transfer of the claim are attached as "Exhibit B".

10. Any objection to the transfer of the claim must be filed and served on or before the following date: _____, 2004. If no objection is timely filed, the Substitute Creditor will be substituted for the Original Creditor in the amount set forth above. Any objection must also be served by mail on the Substitute Creditor and its attorney, if any, at their addresses set forth above.

Dated: _____, 2004

Clerk of the Bankruptcy Court

By: _____
Deputy Clerk

EXHIBIT A

EXHIBIT A

1. Heller Financial, Inc. ("Heller") on its own behalf and as Agent for Bank of America, N.A. and Fleet Capital Corporation ("Claimant") and Furr's Supermarkets, Inc. ("Furr's") are parties to the loan documents (the "Loan Documents") as attached hereto as a collective Exhibit I. As of February 8, 2001 (the "Petition Date"), the claims of Claimant against Furr's under the Loan Documents are not less than (i) \$48,107,674.94 in principal amount (which includes a Letter of Credit), plus (ii) all accrued but unpaid interest at the applicable default rate of interest for the period up to the Petition Date after the occurrence of a prepetition Event of Default, if any, plus (iii) unpaid prepetition attorneys' fees and expenses, plus (iv) other prepetition costs and expenses and other amounts indemnifiable, reimbursable, or otherwise chargeable under the Loan Documents. In addition, as part of its prepetition claims under the Loan Documents, Claimant is entitled to be paid or reimbursed for its postpetition interest and various postpetition fees, costs, and expenses pursuant to the Loan Documents, including, without limitation, (i) post-petition interest in respect of the Prepetition Indebtedness at the applicable default rate of interest specified in the Loan Documents, (ii) postpetition attorneys' fees and expenses, and (iii) all other postpetition costs and expenses and other amounts indemnifiable, reimbursable, or otherwise chargeable under the Loan Documents.

2. Claimant's claims against Furr's in respect of the Prepetition Indebtedness (the "Prepetition Claims") are based on the Loan Documents.

3. The basis for the Claimant's Prepetition Claims is as follows: Pursuant to the Loan Documents, Furr's is obligated to the Claimant with respect to (i) certain loans and other extensions of credit made by Claimant pursuant thereto, (ii) accrued prepetition and postpetition interest, (iii) certain prepetition and postpetition fees, costs, expenses (including, without limitation, attorneys' fees and expenses), and (iv) all other prepetition and postpetition amounts indemnifiable, reimbursable or otherwise chargeable thereunder (collectively, the "Prepetition Indebtedness"). The consideration for the Claimant's claims in respect of the Prepetition Indebtedness is that Claimant made loans and other extensions of credit to Furr's under the Loan Documents.

4. No judgment has been rendered on the Prepetition Claims.

5. To the extent possible, the amounts of all payments on the Prepetition Claims have been credited and deducted for the purpose of making this Proof of Claim.

6. None of the Prepetition Claims are subject to any setoff or counterclaim; provided, however, that Claimant preserves all of its rights of setoff, bankers' lien, and all similar such rights, and nothing herein shall be construed as a waiver thereof.

7. The Prepetition Claims are secured by valid, binding, enforceable, and perfected security interests in all or substantially all of the assets of Furr's. Claimant perfected its prepetition security interests in the inventory of Furr's by filing UCC-1 financing statements (the "Prepetition Financing Statements") against Furr's with the proper state and county offices for the

perfection of such security interests. Copies of the Prepetition Financing Statements are attached hereto as part of Exhibit L.

8. THIS CLAIM IS FILED AS A SECURED CLAIM, except to the extent that the security interests granted the Claimant are insufficient to satisfy the claim. To that extent, the remainder of the claim is filed as an unsecured claim. Nothing herein contained is or shall be deemed to be a waiver or relinquishment in whole or in part of any security interests, liens, or mortgages securing any indebtedness of Furr's to the Claimant.

9. Claimant reserves the right to amend or supplement its Proof of Claim, and/or to file additional Proofs of Claim for additional claims or interests at any time, either before or after any bar date established by the Bankruptcy Court.

10. Claimant reserves the right to file one or more requests for payment of administrative expenses, pursuant to Section 503(a) of the Bankruptcy Code, with respect to any administrative expense claim it may now or hereafter hold or acquire against Furr's or its estate, including, but not limited to the difference between any postpetition interest payments made under the non-default interest rate and the payments under the applicable default rate of interest.

**FOR ALL EXHIBITS SEE
JACOBVITZ, THUMA & WALKER
500 MARQUETTE NW, SUITE 650
ALBUQUERQUE, NEW MEXICO
(505)766-9272**

EXHIBIT B

**AMENDMENT TO
CO-LENDER AGREEMENT**

This Amendment to Co-Lender Agreement (the "**Agreement**"), dated as of December 29, 2003, is among Metropolitan Life Insurance Company ("**MetLife**"), Fleet Capital Corporation ("**Fleet**"), Bank of America, N.A. ("**BofA**"), and Heller Financial, Inc. ("**Heller**"), and together with BofA and Fleet, collectively, the "**Bank Lenders**"; the Bank Lenders and MetLife, together with their respective successors, assigns, transferees and participants in the DIP Facility (defined below), are collectively referred to herein as the "**Lenders**". Heller has acted as agent (the "**Agent**") for the Lenders pursuant to the Financing Order (defined below).

WHEREAS, the Lenders are party to that certain Intercreditor Agreement dated as of December 21, 2000 (the "**Intercreditor Agreement**"), pursuant to which the Lenders have entered into certain arrangements with respect to the indebtedness and collateral represented by the Loan Agreement, the Senior NPA, the Senior NPA Security Agreement, the March NPA, the June NPA, the Other Debt Security Agreement and the Subordinated NPA (as each of such agreements is defined below); such agreements, together with the Intercreditor Agreement, are collectively referred to herein as the "**Financing Documents**".

WHEREAS, each of the Bank Lenders are party to that certain Loan and Security Agreement dated as of December 21, 2000 (the "**Loan Agreement**") pursuant to which, *inter alia*, the Bank Lenders made loans to Furr's Supermarkets, Inc. (the "**Company**") in the outstanding aggregate principal amount of approximately \$48,000,000, the repayment of which loans were secured by a lien on certain property of the Company (the obligations of the Company in respect of the Loan Agreement are herein referred to as the "**Bank Debt**").

WHEREAS, pursuant to, *inter alia*, the Loan Agreement, the Company granted and perfected, for the benefit of the Bank Lenders in respect of the Bank Debt, a lien on its property as provided therein, including, *inter alia*, certain inventory and accounts and other of its property entitled to a priority lien position under the Intercreditor Agreement (the "Heller First Priority Collateral" (as such term is defined in the Intercreditor Agreement)); the Heller First Priority Collateral is referred to herein as the "**Bank Priority Collateral**".

WHEREAS, MetLife is party to that certain Amended and Restated Note Purchase Agreement, dated as of June 30, 1995, as amended and restated as of December 21, 2000 (the "**Senior NPA**") pursuant to which, *inter alia*, the Company issued and MetLife purchased senior secured promissory notes of the Company in the aggregate principal amount of \$25,000,000 (the obligations of the Company in respect of the Senior NPA are herein referred to as the "**Senior NPA Debt**").

WHEREAS, pursuant to, *inter alia*, a Collateral Sharing and Security Agreement dated as of June 30, 1995, as replaced and superceded by a Security Agreement dated as of December 21, 2000 (the "**Senior NPA Security Agreement**"), the Company granted, for the benefit of MetLife as holder of the Senior NPA Debt, a lien on its property as provided therein, including, *inter alia*, certain fixtures and equipment and other of its property entitled to a priority lien

position under the Intercreditor Agreement, the "ML First Priority Collateral" (as such term is defined in the Intercreditor Agreement); the ML First Priority Collateral is referred to herein as the "**Senior NPA Collateral**".

WHEREAS, MetLife is party to that certain Amended and Restated Note Purchase Agreement, dated as of March 27, 2000, as amended and restated as of December 21, 2000 (the "**March NPA**") pursuant to which, *inter alia*, the Company issued and MetLife and certain other parties purchased senior secured promissory notes of the Company in the original aggregate principal amount of \$15,000,000 (the obligations of the Company in respect of the March NPA are herein referred to as the "**March Debt**").

WHEREAS, MetLife is party to that certain Amended and Restated Note Purchase Agreement, dated as of June 23, 2000, as amended and restated as of December 21, 2000 (the "**June NPA**") pursuant to which, *inter alia*, the Company issued and MetLife and certain other parties purchased senior secured promissory notes of the Company in an original aggregate principal amount in excess of \$4,000,000 (together with the March Debt, the obligations of the Company in respect thereof are herein referred to as the "**Other Debt**").

WHEREAS, pursuant to a Security Agreement dated as of December 21, 2000 (the "**Other Debt Security Agreement**"), the Company granted, for the benefit of MetLife as a holder of the Other Debt, a lien on certain of its property.

WHEREAS, MetLife is party to that certain Amended and Restated Subordinated Note Agreement, dated as of June 30, 1995, as amended and restated as of December 21, 2000 (the "**Subordinated NPA**") pursuant to which, *inter alia*, the Company issued and MetLife and certain other parties purchased subordinated promissory notes of the Company in an aggregate principal amount of \$50,000,000 (the obligations of the Company in respect of the Subordinated NPA are herein referred to as the "**Subordinated Debt**").

WHEREAS, on February 8, 2001, the Company filed a voluntary petition (the "**Petition**") for reorganization under chapter 11 of the Bankruptcy Code; the Company retained possession of the Company's assets and was authorized, as a debtor-in possession, to continue the operation and management of the business previously conducted by the Company.

WHEREAS, the Lenders provided the Company with a post-Petition lending arrangement, as reflected in the Post-Petition Loan and Security Agreement dated March 14, 2001 (as amended from time to time, the "**Post-Petition Loan Agreement**") and the order entered March 14, 2001, titled "Final Order (1) Authorizing Debtor to Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief" (as amended from time to time, the "**Financing Order**") and, collectively with the Post-Petition Loan Agreement and the documents and agreements entered into in connection therewith, as amended from time to time, the "**DIP Facility**"). The amounts outstanding from time to time under the DIP Facility are herein referred to as the "**DIP Indebtedness**" and the collateral securing the DIP Indebtedness is herein referred to as the "**DIP Collateral**."

WHEREAS, in connection with the DIP Facility, as of March 14, 2001, MetLife and Bank Lenders entered into a Co-Lender Agreement (the "**Co-Lender Agreement**"). The provisions of the Co-Lender Agreement provided, *inter alia*, for the allocation of proceeds from the liquidation of the collateral pledged by the Company to the Lenders between the Lenders.

WHEREAS, on August 31, 2001, a significant amount of the assets of the Company pledged to MetLife and/or Bank Lenders was sold in a transaction involving Fleming Companies, Inc. ("**Fleming**").

WHEREAS, on December 19, 2001, the chapter 11 case of the Company was converted to a liquidation proceeding under Chapter 7 of the Bankruptcy Code, and Yvette K. Gonzales (the "**Trustee**") was appointed as trustee.

WHEREAS, after the sale involving Fleming, on August 31, 2001, the Company, first as debtor-in-possession and after conversion through its Trustee undertook the liquidation of its remaining assets.

WHEREAS, as the result of certain negotiations with the Trustee, MetLife and Bank Lenders entered into that certain Stipulation and Consent Order (I) Approving the Compromise and Settlement Between the Trustee on Behalf of the Estate, Heller Financial, Inc., Bank of America, N.A., Fleet Capital Corporation and Metropolitan Life Insurance Company and (II) Resolving All Objections Thereto which was approved by the Bankruptcy Court on July 25, 2002. As a result, the liquidation activities of the Trustee continued as provided therein.

WHEREAS, payments from liquidations of assets of the Company have been made to MetLife and to Bank Lenders throughout the course of the Company's bankruptcy, but all payments were made provisionally and with both MetLife and the Bank Lenders reserving and agreeing that the other reserved all rights to contest the appropriateness of the payments and allocation.

WHEREAS, certain disputes have arisen between MetLife on one hand and the Bank Lenders on the other hand with regard to the proper allocation of proceeds from collateral of the Company which has been and which will be liquidated. Those disputes have involved a broad range of issues, including, but not limited to, differences of opinion as to the allocation of funds received from different types of collateral, disputes regarding the appropriate interpretations of prior agreements between the parties, whether proceeds were from Bank Priority Collateral or from Senior NPA Collateral or collateral for any other debt, allocation to the DIP Facility as opposed to pre-Petition debt, issues concerning security interests, and numerous other disputes. MetLife has contended that the Bank Lenders should turn over significant amounts of the funds they have received to MetLife. Bank Lenders have contended that they are entitled to retain all funds previously received and be paid additional funds from future collections.

WHEREAS, as of December 19, 2003, the Bank Lenders have provisionally recovered all amounts due and owing to the Bank Lenders under the Bank Debt and the DIP Indebtedness from the liquidation of the assets of the Company (the "**Current Claim**"), with the sole

exception that there remains due and owing to the Bank Lenders certain miscellaneous fees and expenses in the amount of not more than \$172,050.40 (the "**Remaining Balance**").

WHEREAS, MetLife and the Bank Lenders have entered into good faith negotiations and come to a resolution of the disputes concerning the Company and the Company's chapter 11 and chapter 7 bankruptcy cases. The purpose of this Agreement is to fully and finally settle and resolve those disputes.

WHEREAS, the Lenders intend to resolve all disputes with regard to the Company and the Company's chapter 11 and chapter 7 bankruptcy cases including, but not limited to, disputes with regard to the proper allocation of proceeds from collateral of the Company which has been and which will be liquidated by amending the Co-Lender Agreement as provided herein.

NOW, THEREFORE, the Lenders supplement and modify the agreements and undertakings set forth in the Co-Lender Agreement and hereby agree as follows:

1. *Recitals.* The Recitals set forth above are true and accurate, are a material part of this Agreement, are hereby incorporated by reference, and the parties are entitled to rely thereon.

2. *Allocation to Bank Lenders.* Bank Lenders acknowledge that they have provisionally received payment of the Current Claim. MetLife acknowledges that Bank Lenders are entitled to retain all of the payments they have received to date plus the amount of the Remaining Balance, less \$350,000, the difference of which shall be paid to MetLife upon execution hereof. By way of clarification, pursuant to the terms of this Agreement, Bank Lenders are entitled to recover proceeds from collateral owned by the Company until they have received payment of all principal, interest, reasonable attorneys' fees, reasonable loan fees, and reasonable expenses and costs owed them by the Company, both pre- and post-Petition, less \$350,000 (the total amount being hereinafter called the "**Allocation to Bank Lenders**"). As Bank Lenders are still owed the Remaining Balance in the amount of not more than \$172,050.40, Bank Lenders shall immediately pay \$177,949.60 to MetLife, constituting the amount of \$350,000 minus the amount of the Remaining Balance (the "**Payment by Bank Lenders**"), after which Payment by Bank Lenders the Bank Lenders shall be deemed to have received the Allocation to Bank Lenders. If at any time Bank Lenders receive more than the Allocation to Bank Lenders, Bank Lenders agree to hold such excess in trust for MetLife and will immediately forward the excess to MetLife. In all events, Bank Lenders will in the end have received exactly \$350,000 less than their entire debt of principal, interest, reasonable attorneys' fees, reasonable loan fees, and reasonable expenses and costs. MetLife acknowledges that Bank Lenders have no further payment obligations to MetLife under the Co-Lender Agreement except as specifically set forth herein.

3. *Allocation to MetLife.* Bank Lenders acknowledge that MetLife is entitled to retain all of the payments it has received to date and shall have no further payment obligations to the Bank Lenders under the Co-Lender Agreement except as specifically set forth herein. After execution hereof, all proceeds from collateral owned by the Company shall be paid to MetLife until MetLife has received payment in full of all principal, interest, reasonable attorneys' fees, reasonable loan fees, and reasonable expenses and costs owed MetLife by the Company, both pre- and post-Petition.

4. *Assignment of Claim.* Bank Lenders hereby assign to MetLife all rights and privileges under the Loan Agreement and all other documents associated with the Bank Debt including, without limitation, rights to receive remaining proceeds from assets or claims of the Company or any distribution in connection therewith. The settlement provided herein shall constitute adequate consideration for the payment to MetLife of the \$350,000 and for the assignment of the claim.

5. *Mutual Release of All Claims.* Except with respect to the various rights, duties and obligations set forth in this Agreement, MetLife and Bank Lenders (in Bank Lenders' respective capacities as lenders and/or agent under the Loan Agreement and DIP Facility) each hereby remises, releases and forever discharges the other, and each of its respective officers, directors, agents and attorneys from any and all liability, claims and causes of action, whether known or unknown, and whether disclosed or undisclosed arising out of any act or omission or claim in connection with or related to the Company and/or the Company's chapter 11 or chapter 7 bankruptcy cases. The parties agree that this is a settlement of disputed claims, and neither concedes that its positions and/or claims were invalid or admits those of the other side.

6. *Additional Documents / Further Assurances.* The parties shall at any time, and from time to time, upon the reasonable written request of the other, sign and deliver such further documents and do such further acts and things as may be reasonably required to effect the purposes of this Agreement. In the event MetLife specifically requests in writing that the Bank Lenders participate further in the Company's bankruptcy proceeding, the Bank Lenders shall agree to any reasonable request. In that event, MetLife shall reimburse Bank Lenders for all reasonable costs and attorneys' fees so incurred.

7. *Dispute Resolution.* The parties agree that any dispute under the Agreement will be resolved by arbitration, in the same manner as provided in Section 2.2 of the Co-Lender Agreement.

8. *Third Party Beneficiaries.* This agreement is being entered into by MetLife and Bank Lenders. This agreement is solely for the benefit of the parties hereto and no person or entity other than the undersigned parties (and those persons and entities enumerated in Paragraph 5. hereof) shall be entitled to claim or receive any benefit by reason of this Agreement.

9. *Successors and Assigns.* This Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of MetLife and the Bank Lenders.

10. *Effectiveness of Agreement.* This Agreement shall be immediately effective upon the signature of all parties hereto and the Payment by Bank Lenders required in accordance with the terms hereof.

11. *Headings.* The paragraph headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof.

12. *Interpretation.* MetLife and Bank Lenders are both sophisticated parties with attorneys representing them in the drafting of this Agreement. No inferences in favor of or against any party shall be drawn from the fact that such party has drafted any portion hereof.

13. *Entire Agreement.*

(a) This Agreement constitutes the sole and entire agreement between the parties with respect to the subject matter hereof, and there are no other covenants, promises, agreements or understandings regarding the same. This Agreement may not be modified in any respect except by written amendment signed by the parties affected by the same. The parties hereby: (i) expressly agree that it shall not be reasonable for either of them to rely on any alleged non-written amendment to this Agreement; (ii) irrevocably waive any and all right to enforce any alleged, non-written amendment to this Agreement; and (iii) expressly agree that it shall be beyond the scope of authority (apparent or otherwise) for any of their respective agents to agree to any non-written modification of this Agreement.

(b) This Agreement amends all prior agreements between the Lenders relating to the Company, including the Intercreditor Agreement and the Co-Lender Agreement so that this fully and finally resolves all disputes between them regarding the Company and the Company's chapter 11 and chapter 7 bankruptcy cases including, but not limited to, disputes with regard to the proper allocation of proceeds from collateral of the Company which has been and which will be liquidated. To the extent there is a conflict between the terms of this Agreement, the Co-Lender Agreement and/or the Intercreditor Agreement or any document, agreement, instrument or order evidencing the DIP Facility, the terms of this Agreement shall control with respect to the parties hereto.

14. *Counterparts, Facsimile Signatures.* This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto. The parties agree that facsimile signatures shall be deemed originals for all purposes and shall be binding on the parties.

15. *Severability.* Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

16. *Directly or Indirectly.* Where any provision herein refers to action to be taken by any party, or which such party is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such party.

IN WITNESS WHEREOF, the undersigned hereby agree to the foregoing as of the date first above written.

12/24/2003 12:12 FAX

002/002

METROPOLITAN LIFE INSURANCE COMPANY

By 
 Name: JAMES R. DINDLER
 Title: DIRECTOR

BANK OF AMERICA, N.A.

By _____
 Name:
 Title:

HELLER FINANCIAL, INC.

By _____
 Name:
 Title:

FLEET CAPITAL CORPORATION

By _____
 Name:
 Title:

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METROPOLITAN LIFE INSURANCE COMPANY

By _____
Name:
Title:

BANK OF AMERICA, N.A.

By 
Name: RICHARD LEVENSON
Title: SVP

HELLER FINANCIAL, INC.

By _____
Name:
Title:

FLEET CAPITAL CORPORATION

By _____
Name:
Title:

w0325357.doc

METROPOLITAN LIFE INSURANCE COMPANY

By _____
Name:
Title:

BANK OF AMERICA, N.A.

By _____
Name:
Title:

HELLER FINANCIAL, INC.

By *P. Hayes*
Name: *PATRICK HAYES*
Title: *SVP*

FLEET CAPITAL CORPORATION

By _____
Name:
Title:

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