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

ATTORNEYS FOR MDFC EQUIPMENT LEASING CORPORATION,  
A SUBSIDIARY OF BOEING CAPITAL CORPORATION

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO

IN RE: §  
§ Chapter 11  
FURR'S SUPERMARKETS, INC., § CASE NO. 01-10779-JSS  
A Delaware Corporation §  
§  
Debtor. §

**OBJECTION OF MDFC EQUIPMENT LEASING CORPORATION TO DEBTOR'S  
MOTION FOR ORDER APPROVING SALE OF SOME OR ALL OF DEBTOR'S  
OPERATING ASSETS**

TO THE HONORABLE JAMES S. STARZYNSKI, UNITED STATES BANKRUPTCY  
JUDGE:

MDFC Equipment Leasing Corporation, a subsidiary of Boeing Capital Corporation ("Boeing"), a creditor and interested party in this case, hereby objects to the "Debtor's Motion for Order Approving Sale of Some or All of Debtor's Operating Assets and Granting Related Relief" (the "Debtor's Motion"), and would respectfully show unto the Court as follows:

1. Boeing is an equipment lessor to the Debtor under a Master Lease with individual equipment records ("IER"). A summary of the terms of the Master Lease and 14 IER's is attached hereto as Exhibit "A," and is incorporated herein by reference. There are both monetary and non-monetary defaults under the Master Lease and the IER's. The Master Lease and each IER represent the lease of all equipment and fixtures to outfit an

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**OBJECTION TO DEBTOR'S MOTION FOR ORDER APPROVING SALE OF SOME OR ALL OF DEBTOR'S  
OPERATING ASSETS**

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entire Furr's store. Upon information and belief, all leased Boeing equipment is located at Debtor's stores #945, #875, #896, #946, #894, #871, #812 and #951.

2. Boeing objects to the Debtor's Motion on the following procedural and substantive grounds:

- a. Debtor's Motion represents a *sub rosa* liquidating plan, without the protections or benefits of notice, disclosure, and balloting that is otherwise a hallmark of the Chapter 11 process. Other than the Debtor saying the sale process is an appropriate procedure, the creditors have not been given disclosure of salient facts calculated to give them an opportunity to vote as a group. The Debtor has not demonstrated a compelling reason to forego the protections of the plan process—and therefore, the Debtor's Motion should be denied.
- b. Boeing objects to the characterization in Exhibit 3 of the Debtor's Motion of the Master Lease or IER's #12, 13 or 14 as a secured, or financing lease. To the extent these are found to be true leases, or to the extent that a proposed purchaser at an auction sale prefers that these leases are characterized as a true lease, then the Debtor's Motion both fails to permit such characterization, and there is no cure amount listed for these IER's.
- c. Boeing's Master Lease and IER's are inextricably interwoven and as such, Boeing may object if less than the entirety of the Master Lease and all IER's are either assumed or rejected in their entirety.
- d. Boeing objects to the accuracy of the dollar amounts listed as cure amounts for the pre and post petition monetary defaults listed in Exhibit 2 of the Debtor's Motion.
- e. As a predicate to assumption, section 365 requires cure of all defaults under the Master Lease and the IER's, including those defaults that are not monetary defaults. Debtor's Motion impermissibly assumes that the only defaults under the Master Lease and IER's are

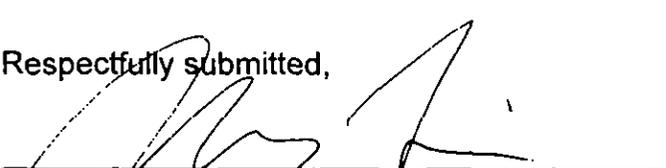
monetary, and then the Debtor seeks to limit Boeing's ability to assert non-monetary defaults.

- f. Debtor's Motion makes insufficient provision for the allocation of proceeds to secured indebtedness, nor does the Debtor's Motion offer sufficient adequate protection of secured interests—including those of Boeing, should the Court subsequently find that the Exhibit 3 items are secured transactions.
- g. The Debtor's Motion fails to provide a mechanism for non-debtor parties to contracts that are to be assumed to raise the issue of adequate assurance of future performance. The Debtor's Motion also does not provide for lessors such as Boeing being permitted to participate in the auction process to review bids—even though lessors have very real issues at stake regarding adequate assurances of future performance.
- h. To the extent that the Debtor seeks a declaration that Boeing's Master Lease or any specific IER is a secured financing transaction, such a determination can only be accomplished in the context of an adversary proceeding.

3. Boeing, therefore, respectfully requests that Debtor's Motion be denied, or in the alternative, relief be fashioned to address the concerns of Boeing.

Dated this 20<sup>th</sup> day of June, 2001.

Respectfully submitted,

  
JEFFREY R. FINE  
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ATTORNEYS FOR MDFC EQUIPMENT  
LEASING CORPORATION, A SUBSIDIARY OF  
BOEING CAPITAL CORPORATION

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing pleading has been served by Fedex Overnight delivery upon Debtor's counsel shown in the Debtor's Motion on this 20<sup>th</sup> day of June, 2001.



JEFFREY R. FINE

<u>IER#</u>	<u>LOCATION</u>	<u>TERM</u>	<u>MONTHLY PAYMENT</u>	<u>NEW OR USED</u>	<u>START DATE/ END DATE</u>
3252-4-001	FURR'S #945, 8050 N. MESA DR, EL PASO, TX 79932	60 MONTH	\$19,268.65	NEW	10/15/94 10/15/99
3252-4-002	FURR'S #875, 5850 EUBANK, NE ALBUQ., NM 87111	60 MONTH	\$9,493.92	NEW	1/15/95 1/15/00
3252-4-003	FURR'S #896, 1100 PASEO DEL PUEBLO, TAOS, NM 87571	60 MONTH	\$11,223.08	NEW	1/15/95 1/15/00
3252-4-004	FURR'S #875, 5850 EUBANK, NE ALBUQ., NM 87111	47 MONTH	\$13,838.05	NEW	4/15/95 3/15/99
3252-4-005	FURR'S #896, 1100 PASEO DEL PUEBLO, TAOS, NM 87571	47 MONTH	\$13,178.80	NEW	4/15/95 3/15/99
3252-4-006	FURR'S #896, 1100 PASEO DEL PUEBLO, TAOS, NM 87571	54 MONTH	\$3,668.75	NEW	7/15/95 1/15/00
3252-4-007	FURR'S #875, 5850 EUBANK, NE ALBUQ., NM 87111	54 MONTH	\$5,460.85	NEW	7/15/95 1/15/00
3252-4-008	FURR'S #945, 8050 N. MESA DR, EL PASO, TX 79932	51 MONTH	\$4,899.61	NEW	7/15/95 10/15/99
3252-4-009	FURR'S #946, 6010 N. MESA DR, EL PASO, TX 79932	60 MONTH	\$29,010.17	NEW	8/1/95 8/1/00
3252-4-010	FURR'S #894, 206 MILLS AVE., LAS VEGAS, NM 87701	60 MONTH	\$18,635.58	NEW	11/15/95 11/15/00
3252-4-011	FURR'S #894, 206 MILLS AVE., LAS VEGAS, NM 87701	60 MONTH	\$432.00	NEW	11/15/95 11/15/00
3252-4-012	FURR'S #871, 8100 VENTURA NE, ALBUQ, NM 87109	60 MONTH	\$47,909.39	NEW	12/20/00 12/20/05
3252-4-013	FURR'S #812, 7800 ENCHANTED HILLS BLVD NE, RIO RANCHO, NM 87124	60 MONTH	\$48,677.32	NEW	12/20/00 12/20/05
3252-4-014	FURR'S #951, 10765 KENWORTHY DR, EL PASO, TX 79924	60 MONTH	\$51,716.34	NEW	12/20/00 12/20/05

EXHIBIT "A"