

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.  
  
Debtor

§  
§  
§  
§

Case No. 11-01-10779-SA  
Chapter 11

**CHARLENE GREEN'S BRIEF  
IN SUPPORT OF AWARD OF ATTORNEYS FEES  
AS PART OF CURE AMOUNT FOR ASSUMPTION OF LEASE**

TO THE HONORABLE JAMES S. STARZINSKY, U.S. BANKRUPTCY JUDGE:

CHARLENE W. GREEN ("Green"), a lessor, creditor and party-in-interest in the above-referenced case, files the following Brief in Support of Award of Attorneys Fees as Part of Cure Amount for Assumption of Lease, and would show the Court as follows:

**Procedural Background**

1. Furr's Supermarkets, Inc. ("Debtor"), filed a voluntary petition for relief on February 8, 2001.
2. Ms. Green is a lessor under an unexpired ground lease (the "Lease") for Furr's store no. 948, located at 201 E. Kerbey, El Paso, Texas.
3. By Order entered July 3, 2001, the Court approved an Asset Purchase Agreement between the Debtor and Fleming Companies, Inc. ("Fleming") for the sale of the Debtor's assets and leases. Pursuant to the sale transaction with Fleming, Green has been notified that the proposed third-party purchaser and assignee of its Lease is S.C. Erica, Inc. ("Erica").

**Cure Amount Hearing**

4. At the Debtor's request, the Court established a procedure for determination of "cure amounts" to be paid to lessors for assumption and assignment of their leases. In accordance with such procedure, the Debtor issued a Notice of

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Proposed Cure Amounts to Ms. Green, and Ms. Green filed an objection to the proposed cure amounts. A hearing on cure amounts was held on August 14, 2001. At the hearing, Ms. Green and the Debtor agreed on the cure amount for the Leases, with the exception of whether Green's attorneys fees should be part of the cure amount which remained for resolution by the Court. Ms. Green reserved her right to seek attorneys fees as part of the cure amount and to file a brief regarding the same. Accordingly, Ms. Green is hereby filing this Brief in support of an award of attorneys fees as part of the cure amount.

### **Legal Authorities**

5. As a result of the Debtor's default under the terms of the Lease, it was necessary for Ms. Green to employ the firm of Krafur Gordon Mott P.C. ("KGM") to represent it in this bankruptcy case. Ms. Green believes she is entitled to recover her reasonable attorneys fees and expenses incurred to KGM as part of the cure amount under the Bankruptcy Code and case law.

6. Section 365(b) of the Bankruptcy Code, which governs the assumption and assignment of unexpired leases, provides in pertinent part as follows:

(b) (1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, *for any actual pecuniary loss to such party resulting from such default*; (emphasis added)

7. As a result of the Debtor's defaults under the Lease, Ms. Green has incurred "actual pecuniary loss" by having to employ and pay attorneys (KGM) to represent her and protect her interests in the Lease in this bankruptcy proceeding.

8. The Lease between the Debtor and Ms. Green does not have an express provision for recovery of attorneys fees. Green acknowledges that many bankruptcy courts have required that the underlying lease provide for attorneys fees to enable a lessor to recover such fees under §365(b)(1)(B). See e.g., In re Entertainment, Inc., 223 B.R. 141, 152-53 (Bankr. N.D. Ill. 1998); In re Pacific Sea Farms, Inc., 134 B.R. 11, 15 (Bankr. D. Ha. 1991); In re Bullock, 17 B.R. 438, 439 (BAP 9<sup>th</sup> Cir. 1982). However, the rationale supporting such cases is that the language and Congressional intent behind §365 is to indemnify the lessor of the lease being assumed from "loss." See e.g., Bullock, 17 B.R. at 439 ("the purpose of §365(b)(1)(B) is to indemnify the other party to the contract or lease being assumed, against loss. The purpose of an attorneys fees clause in a lease . . . is to indemnify the lessor . . . against legal expenses incurred by reason of the other party's default"); Pacific Sea Farms, 134 B.R. at 15 ("the intent of Congress, evidenced by both the statutory language and the legislative history, makes clear that §365(d) was amended to protect lessors from the risk of loss in bankruptcy cases . . . such loss would include attorneys fees necessarily and reasonably incurred by the lessor in protecting its rights under the lease with the debtor"). With respect to Ms. Green, the foregoing rationale would still apply – to indemnify the lessor from loss – regardless if the underlying Lease provides for recovery of attorneys fees.

9. A different line of bankruptcy decisions have held that a lessor's attorneys fees are recoverable under §365 as a condition of assumption, regardless of the

existence of an attorneys fees provision in the underlying lease. See e.g., In re Westworld Community Healthcare, Inc., 95 B.R. 730, 733 (Bankr. C.D. Cal. 1989); In re Foreign Crating, Inc., 55 B.R. 53, 54 (Bankr. E.D. N.Y. 1985). This line of cases hold that a lessor's attorneys fees constitute a "pecuniary loss" under §365(b)(1)(B) and such fees must be paid to assume the lease, regardless of the underlying lease provisions. In Westworld, the court found that §365(b)(1)(B) provided a separate right of compensation for loss related to a default under an assumed lease. Such rationale is consistent with the express statutory language of §365(b)(1)(B) which does not limit recovery of actual pecuniary loss to the terms of the underlying lease agreement. See Westworld, 95 B.R. at 733 (citing In re Bullock, 17 B.R. 438, 439 (9<sup>th</sup> Cir. BAP 1982) for the proposition that §365(b)(1)(B) provides a separate right of compensation for loss to the lessor). Accordingly, under this line of cases, Green would be entitled to recover her reasonable attorneys fees even though the underlying lease does not expressly provide for attorneys fees.

10. Other courts have looked to applicable state law to determine whether a lessor is entitled to recovery of its attorneys fees under §365. See e.g., Shangra-La, Inc., 167 F.3d 843, 850 (4<sup>th</sup> Cir. 1999) (attorneys fees qualify as actual pecuniary losses under §365 if state law recognizing them as such). The Green Lease is governed by the laws of the State of Texas, as the property is located in the State of Texas. Under Texas law, a lessor may recover reasonable attorneys fees for claims based upon a written contract (such as the Lease at issue), regardless of whether the contract provides for recovery of attorneys fees. Tex. Rev. Civ. Prac. & Rem. Code § 38.001 (Vernons 1998), provides in pertinent part:

### § 38.001. Recovery of Attorney's Fees

A person may recover reasonable attorneys fees from an individual or corporation, in addition to the amount of a valid claim and costs, if the claim is for . . .

(8) an oral or written contract.

11. Therefore, under Texas law, Ms. Green would be entitled to recover attorneys fees from the Debtor. There is no dispute that Ms. Green has a "valid claim" against the Debtor for breach of a written contract (the Lease). The Debtor has acknowledged that it owes Ms. Green rent through the cure amount and has breached the Lease. Applying Texas law, courts have recognized lessors are entitled to recover attorneys fees for breach of a written lease by a lessee. See e.g., Twelve Oaks Tower I, Ltd. v. Premier Allergy, Inc., 938 S.W.2d 102, 118 (Tex. Civ. App. – Houston 1996, no writ); Estes v. Wilson, 682 S.W.2d 711, 718 (Tex. Civ. App. – Ft. Worth 1984, writ ref. n.r.e.).

12. Moreover, the Green Lease specifically provides that the remedies and rights under the Lease are not exclusive, but are in *addition* to rights provided by law and statute. See Green Lease attached as Exhibit A, ¶ 17. Accordingly, under Texas statute and Texas law (which are part of the Lease), Green would be entitled to recover her attorneys fees from the Debtor, regardless of the absence of an express attorneys fees provision in the Lease.

13. But for the Debtor's bankruptcy filing and the imposition of the automatic stay, Ms. Green would have had the right to file a suit in Texas against the Debtor for its pre-petition defaults, and recover reasonable attorneys fees for enforcing her rights under the Lease under Texas law. The fact that the automatic stay prevented Ms. Green from filing such suit in Texas state court, and instead required her to enforce

reasonable attorneys fees. Bankruptcy courts have recognized that a lessor that uses bankruptcy procedures to enforce a lease is not precluded from recovery of attorneys fees, because the bankruptcy court is the exclusive forum from which the lessor can obtain relief, since it is prevented from state court relief by the automatic stay. Entertainment, 223 B.R. at 153.

### **Reasonableness and Necessity of Attorneys Fees**

14. Through August 10, 2001, Ms. Green has incurred the amount of \$2,762.49 in attorneys fees and expenses to KGM with respect to enforcement of her rights under the Lease in this bankruptcy proceeding.<sup>1</sup> Attached hereto as Exhibit B is a copy of the invoices for KGM (attorneys for Ms. Green)<sup>2</sup> setting forth the date the services were rendered, a description of the services, the attorney performing the services, the hourly rate of the attorneys, and the amount of time spent rendering the services, as well as expenses.<sup>3</sup> Most of the services were rendered by Mr. Carlos Miranda of KGM, at the hourly rate of \$165 per hour. A small amount of the services were rendered by H. Christopher Mott of KGM, at the hourly rate of \$195 per hour. Both Messrs. Miranda and Mott are board certified in business bankruptcy law by the Texas Board of Legal Specialization, and have significant experience in business bankruptcy cases. It is respectfully submitted that KGM's hourly rates are reasonable, particularly in light of the hourly rates charged by the Debtor's professionals in this case, which

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<sup>1</sup> Ms. Green has and will continue to incur attorneys fees and expenses in this matter, until the Lease is actually assumed and assigned. Therefore, Ms. Green reserves the right to seek further reasonable and necessary attorneys fees that are incurred after August 10, 2001.

<sup>2</sup> KGM has represented other lessors in this bankruptcy case and has billed for the fees and expenses attributable to other lessors separately without duplication.

<sup>3</sup> Additional expenses have been incurred through August 10, 2001 that have yet to be billed.

range from \$230 - \$670 per hour for its general counsel and \$150 - \$175 per hour for its local counsel.

15. It was necessary for Ms. Green to retain attorneys to represent and protect her rights in the Lease in this complex bankruptcy proceeding. Ms. Green is an elderly woman that relies upon the rent payments under the Lease as part of her livelihood. The Debtor is in monetary default under the Lease. The Debtor repeatedly sought extensions of time to assume or reject the Lease, well in excess of the 60-day period provided by the Bankruptcy Code. First the Debtor announced it was going to auction the Leases. Then the Debtor entered into a complex sale transaction with Fleming, whereby Fleming was given the right to direct the assignment of the Lease to unknown third-party purchasers. The Debtor thereafter established a multi-step procedure to determine if the lease assumption requirements of §365 could be satisfied, including a separate procedure for adequate assurance of future performance, a separate procedure for determination of cure amounts, and eventually a hearing on actual assumption and assignment. Throughout this process, many of the hearings affecting the Green Lease were set, objections were due, and a hearing conducted on an expedited basis with shortened notice. As Ms. Green and her counsel are located in Texas, trips to Albuquerque for hearings were necessary.<sup>4</sup> Literally every step of the process was accompanied by multiple pleadings and notices from the Debtor, many of which were then amended, and which affected Ms. Green's rights under in the Lease. Under no circumstances could the Debtor's case and its sale of the Lease be considered a straightforward assumption and assignment of leases by a debtor in

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<sup>4</sup> Ms. Green is appreciative of the Court's willingness to permit attendance of hearings by telephone, which has reduced expenses significantly.

possession. Constant legal representation was needed by Ms. Green with respect to her rights under the Lease because of the particular nature of this bankruptcy case.

WHEREFORE, PREMISES CONSIDERED, Ms. Green prays that the Court award her reasonable attorneys fees and expenses as part of the cure amount to be paid for assumption and assignment of her Lease in the amount of \$2,762.49 as of August 10, 2001, without prejudice to Ms. Green's right to request additional reasonable attorneys fees incurred and expenses accounted for after such date through the date of actual assumption and assignment of her Lease, and for such other and further relief to which she may show herself to be justly entitled.

Respectfully submitted,

**KRAFSUR GORDON MOTT P.C.**  
4695 N. Mesa St.  
El Paso, Texas 79912  
(915) 545-1133 (Telephone)  
(915) 545-4433 (Facsimile)

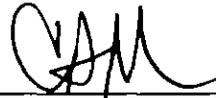
By:   
\_\_\_\_\_  
Carlos A. Miranda, III  
Texas State Bar No. 14199582  
H. Christopher Mott  
Texas State Bar No. 14596430

Attorneys for Charlene W. Green

The undersigned hereby certifies that on the 17<sup>th</sup> day of August 2001, he caused a true and correct copy of the foregoing Brief to be sent by facsimile and first class mail to counsel for the Debtor as follows:

Robert H. Jacobvitz, Esq.  
Jacobvitz Thuma & Walker P.C.  
500 Marquette N.W., Suite 650  
Albuquerque, NM 87102  
(facsimile 505-766-9287)

Stephen J. Lubben, Esq.  
Skadden Arps Slate Meagher  
& Flom LLP  
300 S. Grand Avenue, Suite 3400  
Los Angeles, CA 90071-3144  
(facsimile 213-687-5600)



\_\_\_\_\_  
Carlos A. Miranda, III



#9186

GROUND LEASE

THIS LEASE is made this 17th day of January, 1978, between CHARLENE W. GREEN, tenant in common as to an undivided 60.3794% of the leased premises and FLORENCE M. WATKINS, tenant in common as to an undivided 39.6206% of the leased premises and SAFEWAY STORES, INCORPORATED, a Maryland corporation, as lessor, on the following terms and conditions:

1. Premises, term. Lessor hereby leases to lessee the following described real property and all buildings and improvements thereon in the City of El Paso, County of El Paso, State of Texas

Lots One (1) through Twenty (20), both inclusive, and the Closed Alley in said Block, being all of Block 184, ALEXANDER ADDITION to the City of El Paso, El Paso County, Texas.

TOGETHER WITH the South 1/2 of vacated New York Street lying between the East line of North Mesa Street and the West line of North Stanton Street.

TOGETHER WITH all of lessor's interest in adjoining streets, sidewalks and highways.

TO HAVE AND TO HOLD the leased premises, with all appurtenances, for an original term of twenty (20) years commencing October 1, 1978 and expiring September 30 1998.

2. Rent. Lessee agrees to pay rent in the sum of TWO THOUSAND SIX HUNDRED FIFTY-SIX and NO/100 DOLLARS (\$2,656.00) on the first day of each calendar month during the original term, by checks or drafts payable 60.3794% to Charlene W. Green, 600 Satellite, El Paso, Texas 79912 and 39.6206% to Florence M. Watkins, 666 East Ocean, Long Beach, California 90802, or as designated in writing by lessor, with proration for any fractional calendar month.

3. Taxes, utility charges, etc. Lessee agrees to pay all charges for electricity, gas, heat, water, telephone and other utility services used on the leased premises. Lessee further agrees to pay all taxes and assessments on the leased premises during the original term of this lease, with taxes and assessments to be prorated to the first and last days of said original term.

4. Construction and alteration of building improvements. Lessee may, at lessee's expense, raze any improvements on the leased premises and construct on the leased premises such improvements as are required to allow the use of the leased premises for parking purposes. Lessee shall maintain said improvements in good condition throughout the lease term. Lessor shall not be obligated to maintain the leased premises or to maintain, replace or rebuild any improvements thereon. All improvements constructed on the leased premises by lessee, and all additions, alterations and improvements thereto made by lessee, shall not become a part of the realty even if affixed to the realty but shall remain the exclusive personal property of lessee during the term of this lease. On surrendering possession to lessor, all building improvements then located on the leased premises shall become the exclusive property of the lessor. Lessee agrees not to permit any liens to

15. Renewal options. Lessee, at its option, may extend the term of this lease for seven (7) additional periods of five (5) years each on the same terms and conditions, except rent, by notice mailed to lessor at least sixty (60) days before the expiration of the term or option term then in effect. Monthly rent during the renewal terms shall be as follows:

- a. During the first four (4) five (5) year renewal terms, the sum of TWO THOUSAND SIX HUNDRED FIFTY-SIX AND No/100 DOLLARS (\$2,656.00) payable on the first day of each calendar month during said renewal terms.
- b. During the fifth five (5) year renewal term, the sum of TWO THOUSAND NINE HUNDRED EIGHTY-NINE AND 33/100 (\$2,989.33) payable on the first day of each calendar month during said renewal term.
- c. During the sixth five (5) year renewal term, the sum of THREE THOUSAND THREE HUNDRED TWENTY-TWO AND 66/100 DOLLARS (\$3,322.66) payable on the first day of each calendar month during said renewal term.
- d. During the seventh five (5) year renewal term, the sum of THREE THOUSAND SIX HUNDRED FIFTY-SIX AND No/100 DOLLARS (\$3,656.00) payable on the first day of each calendar month during said renewal term.

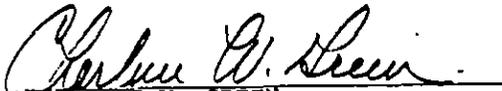
16. Non-merger. The leasehold interest created by this lease shall not merge into the fee interest in the leased premises and this lease shall continue in full force and effect unless formally terminated, notwithstanding future ownership by a single party or entity of the fee interest in the leased premises and the leasehold interest created by this lease.

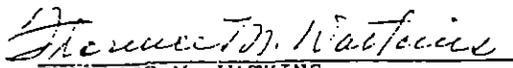
17. Remedies cumulative. No remedy herein conferred upon or reserved to lessor or lessee shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Short form lease. This lease shall not be recorded but it is agreed that, upon request by either party, the parties will execute a short form of this lease which may be recorded by either party.

19. Paragraph headings. The paragraph headings of this lease are inserted only for reference and do not affect the terms and provisions hereof.

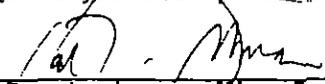
20. Rights of successors. All of the rights and obligations of the parties under this lease shall bind and inure to the benefit of their respective heirs, personal representatives, successors and assigns.

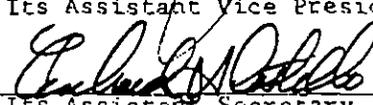
  
CHARLENE W. GREEN

  
FLORENCE M. WATKINS

(lessor)

SAFEWAY STORES, INCORPORATED  
(a Maryland corporation)

By   
Its Assistant Vice President

By   
Its Assistant Secretary

(lessee)

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Furr's Store No. 345 (Store Lease)  
201 E. Kerbey, El Paso, Texas

ASSIGNMENT AND ASSUMPTION OF REAL PROPERTY LEASE

THIS ASSIGNMENT AND ASSUMPTION OF REAL PROPERTY LEASE is entered into this 11th day of March, 1991, by and between FURR'S, INC., a Delaware corporation ("Assignor"), and FURR'S SUPERMARKETS, INC., a Delaware corporation ("Assignee").

W I T N E S S E T H:

WHEREAS, in an Asset Purchase Agreement dated as of January 28, 1991, as heretofore amended, by and between Assignor, Furr's Beverage Company of Texas, Inc., S&B Beverage Company, Inc., and Assignee, Assignor agreed to assign to Assignee all of Assignor's right, title, and interest in, to, and under the lease of real property more particularly described on Exhibit B attached hereto (the "Real Property Lease"), which affects the real property described on Exhibit A attached hereto; and

WHEREAS, pursuant to the Asset Purchase Agreement, Assignee agreed to assume and perform Assignor's obligations under the Real Property Lease.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor hereby grants, bargains, sells, transfers, assigns, and conveys to Assignee all of Assignor's right, title, and interest in, to, and under the Real Property Lease and the real property and improvements described therein.

Assignee hereby accepts the foregoing assignment from Assignor and assumes and agrees to perform all of the obligations of the tenant under the Real Property Lease accruing from and after the date hereof.

This Assignment and Assumption of Real Property Lease is made pursuant and subject to the Asset Purchase Agreement and incorporates all of the terms and conditions therein. The Asset Purchase Agreement does not reserve to Assignor any lien or interest in the Real Property Lease or the real property and improvements described therein.

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This Assignment and Assumption of Real Property Lease shall bind and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

EXECUTED AND DELIVERED the day and year first written above.

FURR'S, INC.,  
a Delaware corporation

By: William C. Lang  
William C. Lang  
Senior Vice President - Finance

FURR'S SUPERMARKETS, INC.,  
a Delaware corporation

By: Jan W. Friederich  
Jan W. Friederich  
Chief Executive Officer

STATE OF TEXAS            )  
                                  )  
COUNTY OF DALLAS        )

This instrument was acknowledged before me on March 1, 1991, by WILLIAM C. LANG, Senior Vice President - Finance, of Furr's, Inc., a Delaware corporation, on behalf of said corporation.

Betty F. Juricek  
Notary Public, State of Texas



Furr's Store No. 345 (Store Lease)  
201 E. Kerby, El Paso, Texas

EXHIBIT B

Lease dated September 20, 1978 between Western Properties Associates Two, a New Jersey limited partnership, and Safeway Stores, Incorporated, a Maryland corporation; Short Form Lease dated September 20, 1978, recorded October 25, 1978 as Instrument No. 38532, Book 944, Page 1798, Real Property Records, El Paso County, Texas, as assigned to Furr's, Inc., a Texas corporation, by way of that certain Assignment and Assumption Agreement dated October 29, 1987, between Safeway Stores, Incorporated, a Delaware corporation, and Furr's, Inc., a Texas corporation, recorded as Instrument No. 81661, Book 1862, Page 0599, Real Property Records, El Paso County, Texas.

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Krafsur Gordon Mott P.C.  
Attorneys & Counselors At Law  
P.O. Box 1322  
El Paso, Texas 79947-1322

August 16, 2001

Billed through 08/16/01

Invoice number 4144-00001-004 CAM

Ms. Charlene W. Green  
821 Lakeway  
El Paso, TX 79932

Furr's Chapter 11

FOR PROFESSIONAL SERVICES RENDERED

|          |     |   |                  |        |
|----------|-----|---|------------------|--------|
| 06/26/01 | CAM | Conference with M. Bernat regarding ground lease situation with Furr's for Kerby Store; conference with Green regarding ground lease and pending auction; review all documents in preparation for auction in Albuquerque; | 1.00 hrs 165 /hr | 165.00 |
| 06/27/01 | CAM | Receive and review Asset Purchase Agreement; review for effect of sale to Fleming Foods on Ground Lease for University Furr's Store;  | .50 hrs 165 /hr  | 82.50  |
| 06/28/01 | CAM | Telephone call to Mr. Green regarding results of Auction;   | .10 hrs 165 /hr  | 16.50  |
| 06/29/01 | CAM | Review proposed Sale Order on Motion to Sell;   | .50 hrs 165 /hr  | 82.50  |
| 07/02/01 | LS  | Open file and prepare conflict memo;  | .30 hrs 65 /hr   | 19.50  |
| 07/02/01 | CAM | Receive and review proposed Agreed Order on Sale Motion; receive additional revised versions from Debtor's counsel throughout the day and review; discuss with client;  | .50 hrs 165 /hr  | 82.50  |
| 07/03/01 | CAM | Review Orders;  | .25 hrs 165 /hr  | 41.25  |
| 07/10/01 | CAM | Receive and review Debtor's Notice and Deadline to Object to the Debtor's Second Motion for Order Extending Time Within Which Debtor May Assume or Reject Unexpired Leases of Nonresidential Real Property;               | .25 hrs 165 /hr  | 41.25  |
| 07/11/01 | LS  | Review and forward correspondence to C. Green regarding Furr's request to extend time to assume leases;   | .20 hrs 65 /hr   | 13.00  |
| 07/11/01 | CAM | Draft letter to client regarding Furr's Motion for Second Extension of Deadline by which to Assume or Reject Unexpired Leases;  | .50 hrs 165 /hr  | 82.50  |

|          |      |   |                  |        |
|----------|------|---|------------------|--------|
| 07/12/01 | CAM  | Conference with S. Kelly at Fleming Companies regarding University Store;   | .25 hrs 165 /hr  | 41.25  |
| 07/12/01 | CAM  | Conference with S. Kelly at Fleming Companies regarding due diligence being performed on Furr's stores by Fleming and forwarding questionnaire to client;   | .20 hrs 165 /hr  | 33.00  |
| 07/12/01 | LS   | Conference with S. Kelly of Fleming Co. regarding due diligence;  | .20 hrs 65 /hr   | 13.00  |
| 07/13/01 | CAM  | Meeting with clients regarding Fleming's correspondence;  | .25 hrs 165 /hr  | 41.25  |
| 07/17/01 | LS   | Review and forward correspondence to Mr. and Mrs. Green regarding term sheet;   | .20 hrs 30 /hr   | 6.00   |
| 07/17/01 | CAM  | Draft letter to client regarding Fleming's Term Sheet;  | .10 hrs 165 /hr  | 16.50  |
| 07/18/01 | CAM  | Receive and review Amended Motion for Order Approving Procedure Relating to the Section 365 Cure & Adequate Assurance Requirements for Assumption of Lease;   | .25 hrs 165 /hr  | 41.25  |
| 07/19/01 | CAM  | Draft letter to client regarding and briefly explaining Amended Motion by Furr's for Order Approving Procedure Relating to the 365 Cure and Adequate Assurance Requirements for Assumption of Leases; | .25 hrs 165 /hr  | 41.25  |
| 07/20/01 | LS   | Review and forward correspondence regarding Amended Motion for Approval of Cure Procedures to W. Green;   | .20 hrs 30 /hr   | 6.00   |
| 07/20/01 | CAM  | Finalize letter to clients regarding Furr's Amended Motion on Lease Assumptions;  | .20 hrs 165 /hr  | 33.00  |
| 07/20/01 | DHEI | Conference with attorney Miranda regarding completing term request; completed same.   | .50 hrs 90 /hr   | 45.00  |
| 07/24/01 | CAM  | Draft letter to client regarding forwarding of Term Sheet to Fleming Industries;  | .10 hrs 165 /hr  | 16.50  |
| 07/24/01 | LS   | Review and forward correspondence to Mr. and Mrs. Green regarding term sheet for Fleming Industries;  | .20 hrs 30 /hr   | 6.00   |
| 07/25/01 | CAM  | Conference with B. Jacobvitz regarding receipt of package from Fleming regarding assumption and assignment of store; phone call to C. Green regarding same;   | .30 hrs 165 /hr  | 49.50  |
| 07/27/01 | CAM  | Work on assumption and assignment issues;   | 1.00 hrs 165 /hr | 165.00 |
| 07/30/01 | CAM  | Conference with attorney for City Tax Assessor regarding property taxes; review documents relating to assumption of [REDACTED] store; continue working on matter;                                     | .70 hrs 165 /hr  | 115.50 |
| 07/31/01 | CAM  | Conference with B. Green regarding status of Furr's matters (n/c);  | .20 hrs 0 /hr    | N/C    |

|                             |     |  |                  |             |
|-----------------------------|-----|--|------------------|-------------|
| 07/31/01                    | CAM | Draft letter to Western Properties, Streisand regarding status of lease on Kerby Property;   | .40 hrs 165 /hr  | 66.00       |
| 08/01/01                    | CAM | Receive and review Amended Notice of Assignment; review matters for objection to Notice of Assignment based on confirmation of Safeway guarantee; review complete list of documents;   | .25 hrs 165 /hr  | 41.25       |
| 08/01/01                    | HCM | Review of Debtor's Notice and Amended Notice of Assignment of Lease; review Lease documents; prepare Objection to Adequate Assurance Requirements on behalf of Lessor;   | 1.10 hrs 195 /hr | 214.50      |
| 08/02/01                    | CAM | Revise and finalize Green's Objection to Adequate Assurance Requirements for Assignment of Leases;   | .25 hrs 165 /hr  | 41.25       |
| 08/02/01                    | LS  | Prepare correspondence regarding Green's Objection to New Mexico U.S. Bankruptcy Clerk and serve same on R. Jacobvitz and S. Lubben;   | .50 hrs 65 /hr   | 32.50       |
| 08/06/01                    | CAM | Receive and review additional financial documents regarding S.C. Erica, Inc.; receive and review Notice of Proposed Cure Amounts, Objection Deadline, and Final Hearing; draft letter to client explaining same, including amounts, deadline to objection, and negotiation of revised cure amount; draft Exhibit List for hearing on Objection to Adequate Assurance matter; | 1.75 hrs 165 /hr | 288.75      |
| 08/06/01                    | LS  | Review and forward correspondence regarding Notice of Cure Amounts to C. Green;  | .40 hrs 30 /hr   | 12.00       |
| 08/07/01                    | CAM | Revise and finalize Exhibits for Hearing; trip to Albuquerque; attend hearing on Objection to Adequate Assurance and Assignment Motion;  | 3.25 hrs 165 /hr | 536.25      |
| 08/09/01                    | LS  | Review and forward Objection to Adequate Assurance Requirements to C. Green;   | .20 hrs 30 /hr   | 6.00        |
| 08/09/01                    | LS  | Preparation of supporting documentation for Objections to Notices of Proposed Cure Amounts;  | 1.00 hrs 65 /hr  | 65.00       |
| 08/10/01                    | LS  | Prepare correspondence to the U.S. Bankruptcy Clerk in New Mexico and file and serve Charlene Green's Objection to Debtor's Notice of Proposed Cure Amounts;   | .50 hrs 65 /hr   | 32.50       |
| Total professional services |     |  |                  | \$ 2,632.50 |

EXPENSES

|          |                                     |       |
|----------|-------------------------------------|-------|
| 07/11/01 | Copies                              | 1.60  |
| 07/12/01 | Postage                             | .80   |
| 07/12/01 | Long Distance                       | .40   |
| 07/13/01 | Copies                              | .20   |
| 07/14/01 | Copies                              | .20   |
| 07/17/01 | Copies                              | .20   |
| 07/17/01 | Postage                             | .34   |
| 07/20/01 | Copies                              | .40   |
| 07/20/01 | Postage                             | .57   |
| 07/23/01 | Fax                                 | 5.00  |
| 07/23/01 | Long Distance                       | .40   |
| 07/24/01 | Copies                              | .40   |
| 07/24/01 | Postage                             | .34   |
| 07/27/01 | Copies                              | 8.60  |
| 08/02/01 | Fax                                 | 26.00 |
| 08/02/01 | Long Distance                       | .40   |
| 08/02/01 | Long Distance                       | 3.63  |
| 08/03/01 | Copies                              | 4.20  |
| 08/03/01 | Postage                             | 1.26  |
| 08/06/01 | Copies                              | .40   |
| 08/06/01 | Postage                             | 1.72  |
| 08/07/01 | Copies                              | .40   |
| 08/07/01 | Copies                              | 13.80 |
| 08/09/01 | Postage                             | .57   |
| 08/10/01 | Postage                             | .80   |
| 08/10/01 | Postage                             | 1.02  |
| 08/10/01 | Fax                                 | 8.00  |
| 08/10/01 | Fax                                 | 8.00  |
| 08/10/01 | Long Distance                       | .81   |
| 08/10/01 | Long Distance                       | .81   |
| 08/13/01 | Travel Expense - Taxi (Albuquerque) | 12.70 |
| 08/13/01 | Long Distance                       | 2.26  |
| 08/14/01 | Copies                              | .20   |
| 08/14/01 | Postage                             | .34   |
| 08/14/01 | Fax                                 | 22.00 |
| 08/14/01 | Long Distance                       | 1.22  |

Total expenses \$ 129.99

SUMMARY OF AMOUNTS NOW DUE

|                             |           |         |          |
|-----------------------------|-----------|---------|----------|
| H. Christopher Mott         | 1.10 hrs  | 195 /hr | 214.50   |
| Carlos A. Miranda           | .20 hrs   | 0 /hr   | N/C      |
| Carlos A. Miranda           | 13.10 hrs | 165 /hr | 2,161.50 |
| David Heidenreich           | .50 hrs   | 90 /hr  | 45.00    |
| Lourdes N. Spears           | 1.20 hrs  | 30 /hr  | 36.00    |
| Lourdes N. Spears           | 2.70 hrs  | 65 /hr  | 175.50   |
| Current Professional Servic | 18.80 hrs | \$      | 2,632.50 |

Ms. Charlene W. Green  
Invoice number 4144-00001-004 CAM

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|                                |    |          |
|--------------------------------|----|----------|
| Copies                         |    | 30.60    |
|                                |    | 69.00    |
| Long Distance Calls            |    | 9.93     |
| Postage                        |    | 7.76     |
| Travel Expense                 |    | 12.70    |
|                                |    | -----    |
| Current Expenses               | \$ | 129.99   |
|                                |    | -----    |
| Total Charges for this invoice | \$ | 2,762.49 |

Outstanding balance does not reflect payments received  
after July 31, 2001. Please accept our thanks if  
payment has been mailed.