

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

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In re

FURR'S SUPERMARKETS, INC.,

U.S. BANKRUPTCY COURT  
ALBUQUERQUE, N.M.  
Case No. 11-01-10779-SA  
Chapter 11

Debtor.

**MOTION FOR ORDER APPROVING DEBTOR'S  
REJECTION OF CERTAIN EXECUTORY CONTRACTS**

Furr's Supermarkets, Inc. (the "Debtor") submits this motion (the "Motion") for an order under 11 U.S.C. § 365(a) approving its rejection of certain executory contracts, and respectfully represents as follows:

1. On February 8, 2001, the Debtor filed a voluntary petition in this Court for reorganization relief under chapter 11 of the United States Bankruptcy Code.<sup>1</sup> The Debtor continues to operate its business and manage its properties as debtor-in-possession under Bankruptcy Code §§ 1107(a) and 1108.

2. The Debtor requests that the Court approve, under 11 U.S.C. § 365(a), its rejection of four executory contracts, listed on Exhibit A, attached hereto (the "Contracts"), the rejection to be effective as of the date of this Motion.

**BASIS FOR RELIEF**

3. The Contracts that the Debtor has elected to reject cover marketing and product services, including advertising programs and cleaning products. The Debtor has determined in its business judgment that the Contracts are not necessary to its ongoing business

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<sup>1</sup> 11 U.S.C. §§ 101-1330.

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business operations, and that the costs of performing under the Contracts constitute a substantial and unnecessary drain on its cash resources. By rejecting the Contracts now, the Debtor will avoid unnecessary administrative charges.

4. For these reasons, the rejection of the Contracts is in the best interests of the Debtor's estate, creditors and interest holders.

#### APPLICABLE AUTHORITY

5. Under Bankruptcy Code § 365, a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." In NLRB v. Bildisco and Bildisco, the Supreme Court acknowledged that a decision to assume or reject an ordinary executory contract is governed by the traditional business judgment standard.<sup>2</sup> The debtor satisfies this standard if it shows that rejection will benefit the estate.<sup>3</sup>

6. These four Contracts are costly to maintain and unnecessary to the Debtor's ongoing operations and business. They constitute an unnecessary drain on the Debtor's cash resources. The decision to reject them reflects an exercise of sound business judgment.

7. The Debtor may have claims against any or all of the other parties to the Contracts, arising under or independently of the Contracts. This Motion is not an election of remedies, and the Debtor does not waive any such claims by filing this Motion or rejecting

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<sup>2</sup> 465 U.S. 513, 523 (1984). The issue in Bildisco was whether the same standard governing "ordinary" contracts applied to the rejection of a collective bargaining agreement. See also In re Mile Hi Metal Systems, Inc., 899 F.2d 887, 896 n.13 (10<sup>th</sup> Cir. 1990) (Seymour, J. concurring) (so-called "business judgment" test applies to ordinary executory contracts).

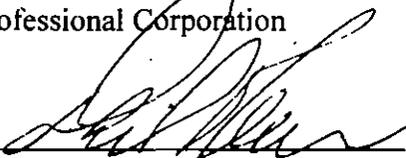
<sup>3</sup> Commercial Fin., Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.), 47 B.R. 425, 427 (D. Haw. 1985) ("Under the business judgment test, a court should approve a debtor's proposed rejection if such rejection will benefit the estate.") (citation omitted).

the Contracts. The Debtor reserves its right to object to any proof of claim filed by any of those parties and any new or amended proof of claim that any of them may file in the future.

WHEREFORE, the Debtor requests that the Court enter an order: (i) approving its rejection of the Contracts as of the date of this Motion and (ii) granting such other and further relief as is just and proper.

Dated: Albuquerque, New Mexico  
March 7, 2001

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**EXHIBIT A**

**REJECTED EXECUTORY CONTRACTS**

<u>Contract Vendor</u>	<u>Subject of Contract</u>
1. Database Marketing Group, Inc.	design, print and distribution of direct mail advertising literature to community
2. Birdwell Cleaning Products, Inc.	installation, display and supply of cleaning products, including brooms and mops, for sale to customers
3. The Libman Company	installation, display and supply of cleaning products, including brooms and mops, for sale to customers
4. Floorgraphics, Inc.	installation and maintenance of advertising program utilizing pressure sensitive decals affixed to the floor in various supermarkets