UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

ALBUQUERQUE, NM

In re:

FURR'S SUPERMARKETS, INC.,

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

Debtor.

DISCLOSURE OF JACK D. MICHEL, MICHEL REAL ESTATE, PURSUANT TO BANKRUPTCY RULES 2014 AND 2016

Jack D. Michel, Michel Real Estate, ("Michel") hereby states, in connection with the motion of the Debtor in Possession Furr's Supermarket's, Inc. ("Furr's"), to employ Michel to render professional services to Furr's in connection with Furr's sale of certain unimproved property in Kermit, Texas:

1. To the best of the undersigned's knowledge, information, and belief, after making reasonable inquiry, Michel has no connection with Furr's, Furr's creditors, or any other party in interest in this case, or their respective attorneys and accountants, the United States Trustee, or any person employed in the office of the United States Trustee, except that Michel may render professional services to clients who are or may be adverse to Furr's, which services are wholly unrelated to Furr's or to this bankruptcy case.

2. The arrangement for compensating Michel, if the Court approves Debtor's employment of Michel, is described in the listing agreement attached hereto as Exhibit A.

3. Michel has received no transfer, assignment, or pledge of property for post-petition services.

4. Michel has not shared or agreed to share with any other person or entity, other than with Michel's regular associates or employees, any compensation paid or to be paid by Debtor in or in connection with this bankruptcy case.

1345

Jack D. Michel, Michel Real Estate

By: _____

This certifies that a copy
of the foregoing document
was served by mail on:

United States Trustee
P.O. Box 608
Albuquerque, NM 87103

this 15th day of November, 2001.

_____
David T. Thuma

11/01/2001 09:09 9155866684 MICHEL REAL ESTATE PAGE 02

TEXAS ASSOCIATION OF REALTORS®

COMMERCIAL REAL ESTATE LISTING AGREEMENT
EXCLUSIVE RIGHT TO SELL

USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.
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1. **PARTIES:** The parties to this agreement (this Listing) are Farr's Properties, Inc. (Seller) and Jack D. Michel (Broker). Seller appoints Broker as Seller's sole and exclusive real estate agent and grants to Broker the exclusive right to sell the Property.

2. **PROPERTY:**

A. The Property is that real property situated in Winkler County, Texas at 5.53 acres on Hwy. 302, Kermit, TX 79745 *(address)* that is legally described as follows: *(Identify exhibit if described by attachment.)*
5.53 acres out of the S/2 of the E/2 of the NW/4, Section 27, Block B-3, PSL Survey.

B. Except as otherwise provided in this Listing, Broker is to market the Property together with:
(1) all buildings, improvements, and fixtures;
(2) all rights, privileges, and appurtenances pertaining to the Property, including Seller's right, title, and interest in any minerals, utilities, adjacent streets, alleys, strips, gores, and rights-of-way;

(4) Seller's interest in all licenses and permits related to the Property;
(5) Seller's interest in all third party warranties or guaranties, if transferable, relating to the Property or any fixtures;
(6) Seller's interest in any trade names, if transferable, used in connection with the Property; and
(7) the following personal property: _____

(Describe any exceptions, reservations, or restrictions in Paragraph 16 or an addendum.)
(If the Property is a condominium, attach condominium addendum.)

3. **LISTING PRICE:** Seller lists the Property for the gross amount of $ 27,650.00 (Listing Price) and agrees to sell the Property for the Listing Price or any other price acceptable to Seller. Seller will pay all typical closing costs charged to sellers of real property in Texas (seller's typical closing costs are those set forth in the commercial contract forms published by the Texas Association of REALTORS®) except _____

4. **TERM:** This Listing commences on April 17, 2001 (Commencement Date) and ends at 11:59 p.m. on October 17, 2001 (Expiration Date). If Seller enters into a binding written contract to sell the Property before the Commencement Date and that contract is in effect on the Commencement Date, this Listing will not commence and will be void.

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B. Earned: Broker's fee is earned when any one of the following occurs during the term of this Listing:
(1) Seller sells, exchanges, agrees to sell, or agrees to exchange the Property to anyone at any price on any terms;
(2) Broker individually or in cooperation with another broker procures a buyer ready, willing, and able to buy the Property at the Listing Price or at any other price acceptable to Seller;
(3) Seller grants or agrees to grant to another person an option to purchase the Property;
(4) Seller transfers or agrees to transfer Seller's interest (stock or shares) in any entity that holds title to the Property for the purpose of conveying the Property to another person; or
(5) Seller breaches this Listing.

C. Payable: Once earned, Broker's fee is payable, either during the term of this Listing or after it ends, at the earlier of:
(1) the closing and funding of any sale or exchange of the Property;
(2) Seller's refusal to sell the Property after Broker's fee has been earned;
(3) Seller's breach of this Listing; or
(4) at such time as otherwise set forth in this Listing.

Broker's fee is not payable if a sale of the Property does not close or fund as a result of: (i) Seller's failure, without fault of Seller, to deliver a title policy to a buyer; (ii) loss of ownership due to foreclosure or other legal proceeding; or (iii) Seller's failure to restore the Property, as a result of a casualty loss, to its previous condition by the closing date set forth in a contract for the sale of the Property.

D. Other Fees:

(1) Lease of the Property: If Broker procures a tenant to lease all or part of the Property and Seller agrees to lease all or part of the Property to the tenant, Seller will pay Broker at the time the lease is executed a fee of:

☐ (a) _____ % of all rents to be paid for the term of the lease.

☐ (b) _____ .

If Broker procures a tenant under this Paragraph 5D(1), the provisions of Paragraph 10 will be read to include a landlord, tenant, and lease of the Property.

(2) Breach by Buyer Under Contract:

(a) If a buyer, with whom Seller has entered into a contract for the sale of the Property during the term of this Listing, breaches such contract and Seller receives earnest money or a portion thereof as liquidated damages, Seller will pay Broker the lesser of one-half of such amount or the amount of Broker's fee stated in Paragraph 5A. Any amount paid under this Paragraph 5D(2)(a) is in addition to any amount that Broker may be entitled to receive for subsequently selling the Property.

(b) If Seller collects the sales price and/or damages by suit, compromise, settlement or otherwise from a buyer who breached a contract for the sale of the Property entered into during the term of this Listing, Seller will pay Broker, after deducting attorney's fees and other expenses of collection, an amount equal to the lesser of one-half of the amount collected after deductions or the amount of the Broker's fee stated in Paragraph 5A. Any amount paid under this Paragraph 5D(2)(b) is in addition to any amount that Broker may be entitled to receive for subsequently selling the Property.

(3) Transaction Fees: _____ _____
_____
_____ .

E. Protection Period:

(1) "Protection period" means that time starting the day after this Listing ends and continuing for 30 days.

(2) If Seller agrees to sell or lease all or part of the Property during the protection period to any person whose attention has been called to the Property during the time this Listing is in effect, Seller will pay Broker, upon the closing of the sale or upon execution of the lease, the amount that Broker would have been entitled to receive if this Listing were still in effect, if Broker, not later than 10 days after this Listing ends, sends Seller written notice specifying the names of the persons whose attention has been called to the Property during the term of this Listing.

(3) "Person" is broadly construed to include any individual or entity in any capacity. "Sell" is broadly construed to include any transfer of any interest in the Property whether by agreement or option.

(4) This Paragraph 5E survives termination of this agreement. This Paragraph 5E will not apply if Seller agrees to sell or lease the Property during the protection period and the Property is exclusively listed with another Texas licensed real estate broker at the time the sale or lease is negotiated and Seller is obligated to pay the other broker a fee for the sale or lease.

Initialed for Identification by Broker/Associate [illegible] and Seller [illegible] , _____

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F. County: All amounts payable to Broker are to be paid in cash in Winkler County, Texas.

G. Escrow Authorization: Seller authorizes, and Broker may so instruct, any escrow or closing agent authorized to close a transaction for the purchase or acquisition of the Property to collect and disburse to Broker all amounts payable to Broker under this Listing.

NOTICE: Under Chapter 62, Texas Property Code, Broker is entitled to claim a lien against the Property to secure payment of an earned commission.

6. **RESERVED.** *(Reserved for the purpose of maintaining consistent paragraph numbers in different listing forms.)*

7. **ACCESS TO THE PROPERTY:**

A. To facilitate the showing and sale of the Property, Seller instructs Broker and Broker's associates to:
(1) access the Property at reasonable times; and
(2) authorize other brokers, inspectors, appraisers, engineers, and repair persons to enter the Property at reasonable times.

B. Authorizing access to the Property means giving permission to another person to enter the Property, disclosing any security codes necessary to enter the Property to such person, and lending a key to the Property to such person.

8. **REQUIRED DISCLOSURES:**

A. Property Condition: Seller and Broker must disclose any known material defect in the Property to a prospective buyer. *(Check (1) or (2) only.)*

☐ (1) Seller is not aware of any material defects to the Property except as stated in the attached Property Condition Statement. Seller authorizes Broker to furnish prospective buyers and other brokers with a copy of the Property Condition Statement.

☐ (2) Except as listed below, Seller is not aware of:
(a) any material defect on the Property or any condition that materially and detrimentally affects the Property;
(b) any condition on the Property that violates any law or ordinance;
(c) whether any part of the Property lies in a flood hazard area;
(d) any environmental hazards or conditions that affect the Property;
(e) whether the Property is or has ever been used for the storage or disposal of hazardous materials or toxic waste, a dump site or landfill, or any underground storage tanks or containers;
(f) whether radon, asbestos insulation or fireproofing, urea-formaldehyde foam insulation, lead-based paint, or other pollutants or contaminants of any nature now exist or have ever existed on the Property;
(g) whether wetlands as defined by federal or state law or regulation are on the Property; and
(h) whether threatened or endangered species or their habitat are on the Property.

(List any exceptions to (a)-(h) in Paragraph 16 or an addendum.)

B. Accuracy of Required Disclosures: Seller represents that Seller has disclosed all known material defects and material facts affecting the Property.

C. Indemnity: Seller will protect, defend, indemnify, and hold Broker, Broker's associates, and any other brokers or their associates harmless from any damages, costs, attorney's fees, or expenses arising from Seller's failure to disclose any material or relevant information or the giving of any incorrect information to Broker, Broker's associates, any other brokers or their associates, or prospective buyers.

9. **COOPERATION WITH OTHER BROKERS:** Broker will allow other brokers to show the Property to prospective buyers and if another broker, who represents a buyer, procures an acceptable offer, Broker will pay the other broker part of Broker's fee described in Paragraph 5A. Broker will determine the terms and conditions of offers to compensate other brokers.

10. **AGENCY RELATIONSHIPS:**

A. Seller acknowledges receipt of the attached exhibit entitled "Information About Brokerage Services" which is incorporated in this Listing for all purposes.

B. Broker will exclusively represent Seller in negotiations for the sale of the Property unless Seller authorizes Broker, as set forth below, to act as an intermediary in the event Broker also represents a buyer who offers to purchase the Property. *(Check (1) or (2) only.)*

☐ (1) Intermediary Relationship Authorized: Seller authorizes Broker to show the Property to prospective buyers Broker has agreed to represent. If Broker represents a buyer who offers to buy the Property, Seller authorizes Broker to act as an intermediary between the buyer and Seller, to present any offer such buyer may wish to make, and to assist both Seller

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and buyer in negotiations for the sale of the Property. Broker's compensation will be paid by Seller as provided in Paragraph 5. **If Broker acts as an intermediary between Seller and a buyer, Broker:**

(a) may not disclose to the buyer that Seller will accept a price less than the asking price (Listing Price) unless otherwise instructed in a separate writing by Seller;

(b) may not disclose to Seller that the buyer will pay a price greater than the price submitted in a written offer to Seller unless otherwise instructed in a separate writing by the buyer;

(c) may not disclose any confidential information or any information Seller or the buyer specifically instructs Broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose the information by the Real Estate License Act or a court order or if the information materially relates to the condition of the Property;

(d) shall treat all parties to the transaction honestly; and

(e) shall comply with the Real Estate License Act.

If Broker acts as an intermediary, Broker may appoint a licensed associate(s) of Broker to communicate with, carry out instructions of, and provide opinions and advice during negotiations to Seller and appoint another licensed associate(s) for the same purposes to a buyer.

☒ (2) Intermediary Relationship not Authorized: Broker will exclusively represent Seller and may not act as an intermediary between Seller and a buyer. Seller understands: *(Check (a) or (b) only.)*

☒ (a) Broker exclusively represents sellers and does not represent buyers.

☐ (b) Broker represents both buyers and sellers, but Broker will not show the Property to any buyer Broker represents.

C. During the term of this Listing or after its termination, Broker may not knowingly disclose information obtained in confidence from Seller, except as authorized by Seller or required by law. Broker may not disclose to Seller any information obtained in confidence regarding any other person Broker represents or may have represented, except as required by law.

11. BROKER'S AUTHORITY:

A. Broker will make reasonable efforts and act diligently to sell the Property.

B. In addition to other authority granted by this Listing, Seller authorizes Broker and Broker's associates to:
(1) advertise the Property by means and methods as Broker determines;
(2) place information about the Property into computerized listing services and on the Internet as Broker determines;
(3) place a "For Sale" sign or similar marketing sign on the Property;
(4) remove from the Property all other signs offering the Property for sale or lease;
(5) furnish comparative marketing and sales information about other properties to prospective buyers;
(6) disseminate information about the Property to other brokers and their associates;
(7) obtain information from any holder of any note secured by a lien on the Property;
(8) upon a final and closed sale of the Property, disclose the sales price and terms of sale to other brokers, appraisers, other real estate professionals, and any listing services into which information about the Property was placed; and
(9) accept earnest money and deposit the earnest money in trust in accordance with the terms of a contract for the sale of the Property.

C. Broker is not authorized to execute any document in the name of or on behalf of Seller with respect to the Property.

D. Any information submitted to a listing service becomes the property of the listing service for all purposes.

12. SELLER'S REPRESENTATIONS: Except as provided in Paragraph 16, Seller represents that:

A. Seller has fee simple title to and peaceable possession of the Property and all its improvements and fixtures thereon, unless rented, and the legal capacity to convey the Property;
B. Seller is not now a party to a listing agreement with another broker for the sale, exchange, or lease of the Property;
C. no person or entity has any right to purchase, lease, or acquire the Property by virtue of an option, right of first refusal, or other agreement;
D. no delinquencies or defaults exist under any deed of trust, mortgage, or other encumbrance on the Property;
E. the Property is not subject to the jurisdiction of any court; and
F. all information relating to the Property provided to Broker by Seller is true and correct.

13. SELLER'S ADDITIONAL PROMISES: Seller agrees to:

A. cooperate fully in good faith with Broker to facilitate the showing and marketing of the Property;
B. refer all prospective buyers to Broker and not negotiate with any prospective buyer directly;
C. not enter into a listing agreement for the sale or exchange of the Property with another broker to become effective during the term of this Listing;

Initialed for Identification by Broker/Associate [illegible] and Seller [illegible], _____

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D not enter into a listing agreement for the lease of all or part of the Property with another broker to become effective during the term of this Listing without Broker's written permission;

current operating statement, if any, pertaining to the Property; and

F. advise Broker of any tenants moving in or out of the Property.

14. **LIMITATION OF LIABILITY:**

A. If the Property is or becomes vacant during the term of this Listing, Seller must notify Seller's casualty insurance company and request a "Vacancy Clause" to cover the Property. Broker is not responsible for the security of the Property nor for inspecting the Property on any periodic basis.

B. Broker is not responsible or liable in any manner for personal injury to any person or for loss or damage to any person's real or personal property resulting from:
(1) other brokers, inspectors, appraisers, engineers, and repair persons who are authorized to access the Property;
(2) vandalism;
(3) theft;
(4) freezing water pipes;
(5) a dangerous condition on the Property;
(6) the Property's non-compliance with any law or ordinance;
(7) acts of third parties; or
(8) any act or omission not caused by Broker's negligence.

C. Seller agrees to protect, defend, indemnify, and hold Broker harmless from any liability for which Broker is not responsible under this Listing.

15. **IRS:** The Internal Revenue Service (IRS) requires a closing agent to report the sales price, Seller's tax identification number, and other information to the IRS. Seller will provide to any closing agent such information at the time of closing. IRS requires a buyer of real property to withhold a percentage of the sales price from Seller if Seller is a foreign person. A foreign person includes nonresident aliens, foreign corporations, foreign partnerships, foreign trusts, or foreign estates. In most sales, Seller will be required to deliver an affidavit that Seller is not a foreign person. Seller certifies that Seller ☐ is ☐ is not a foreign person.

16. **SPECIAL PROVISIONS:**

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20. NOTICES: All notices between the parties under this Listing must be in writing and are effective when hand-delivered, mailed, or sent by electronic transmission to:

Broker at 107 E. Winkler	Seller at P.O. Box 10267
Kermit, TX 79745	Albuquerque, NM 87184
Phone 915-586-6681	Phone 505-269-6178
Fax 915-586-6684	Fax
E-mail duffmichel@yahoo.com	E-mail

21. AGREEMENT OF PARTIES:

A. Addenda: Addenda and other documents which are part of this Listing are **Information About Brokerage Services** and:

- ☐ (1) Property Description Exhibit identified in Paragraph 2;
- ☐ (2) Condominium Addendum;
- ☐ (3) Commercial Property Condition Statement;
- ☐ (4) Other: _____

B. Entire Agreement: This Listing contains the entire agreement between the parties and may not be changed except by written agreement.

C. Assignability: This Listing may not be assigned by either party without the written approval of the other party.

D. Binding Effect: This Listing is binding upon the parties, their heirs, administrators, executors, successors, and permitted assigns.

E. Joint and Several: All Sellers executing this Listing are jointly and severally liable for the performance of all its terms.

F. Governing Law: The laws of the State of Texas govern the interpretation, validity, performance, and enforcement of this Listing.

G. Severability: If any clause in this Listing is found to be invalid or unenforceable by a court of law, the remainder of this Listing will not be affected and all other provisions of this Listing will remain valid and enforceable.

22. ADDITIONAL NOTICES:

A. **Broker's fees and the sharing of fees between brokers are not fixed, controlled, recommended, suggested, or maintained by the Association of REALTORS® or any listing service. Brokerage fees are set by individual firms and may be negotiable.**

B. **Broker is obligated under law to show and make the Property available to all persons without regard to race, color, religion, national origin, sex, disability, or familial status. Local ordinances may provide for additional protected classes (e.g., creed, status as a student, marital status, sexual orientation, or age).**

C. **Unless expressly agreed otherwise, Broker will submit all offers received by Broker for the sale of the Property, including any back-up offers Broker receives after Seller has entered into a binding contract to sell the Property. However, Broker is not obligated to continue to market the Property after Seller has entered into a binding contract to sell the Property, unless specifically requested by Seller in writing.**

D. **If the Property contains any residential dwelling built before 1978, federal law requires that before a buyer is obligated to purchase the Property, the Seller will: (1) provide the buyer with a lead hazard information pamphlet (as prescribed by EPA); and (2) disclose the presence of any known lead-based paint or lead-based paint hazards.**

E. **Broker cannot give legal advice. This is intended to be a legally binding agreement. READ IT CAREFULLY. If you do not understand the effect of this Listing, consult your attorney BEFORE signing.**

Jack D. Michel	0330424	[signature]	4/25/01
Broker's Printed Name	License No.	Seller's Signature	Date
By: [signature]	04/17/2001	Glen W Denison SRVP	
Broker's or Associate's Signature	Date	Seller's Signature	Date
Michel Real Estate		Pears Supermarkets, Inc	

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