

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

FILED  
12:00 MIDNIGHT  
SEP 27 2001

In re:

FURR'S SUPERMARKETS, INC.,

DROP BOX  
United States Bankruptcy Court  
Albuquerque, New Mexico

Case No. 11-01-10779 SA  
Chapter 11

Debtor.

**DEBTOR'S MOTION TO APPROVE THE SALE OF CERTAIN LIQUOR LICENSES  
AND EQUIPMENT FREE AND CLEAR OF LIENS, AND FOR AN ORDER  
ESTABLISHING PROCEDURES FOR THE SALE OF LIQUOR LICENSES AND  
PAYMENT OF LIQUOR WHOLESALERS AND CERTAIN TAXES**

Furr's Supermarkets, Inc., debtor and debtor in possession ("Debtor"), moves the Court for an order approving the sale of certain liquor licenses and equipment free and clear of liens, and establishing procedures for the sale of liquor licenses and payment of liquor wholesalers and certain taxes, under Bankruptcy Code §§105(a) and 363, and Fed. R. Bankr. P. 6004, as set forth.

In support of this Motion, Debtor states:

1. Commencement of Case. On February 8, 2001 (the "Petition Date"), the Debtor filed a voluntary petition in this Court under Chapter 11 of the Bankruptcy Code. The Debtor continues to operate its business and manage its properties as a debtor in possession under Bankruptcy Code §§ 1107(a) and 1108.

2. The Debtor's Business. Prior to its sale of assets to Fleming Companies, Inc. ("Fleming"), the Debtor's business consisted of operating 66 supermarkets located throughout New Mexico and western Texas. Its secured lenders include several sophisticated, national institutions. Secured and unsecured debt exceeds \$200 million.

1120

3. The Sale to Fleming. On July 3, 2001, the Court entered an order approving the sale of substantially all of Debtor's assets to Fleming (the "Sale Order"). The closing of the sale approved by the Sale Order (the "Fleming Sale") took place on August 31, 2001.

4. Post- Fleming Sale Operations. After consummation of the Fleming Sale, the Debtor's objective is to pay administrative expenses and other claims to the extent feasible, to obtain the realizable value of its remaining assets, and to wind-down its affairs in an orderly and efficient manner.

5. Jurisdiction And Venue. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

6. Liquor Licenses. After consummation of the Fleming Sale, the Debtor retained and still owns the following 21 liquor licenses:

**Retailer Licenses**

4023	Albuquerque
4029	Los Lunas
4042	Rio Rancho
4047	Farmington
4051	Albuquerque
4069	Farmington

**Dispenser Licenses**

187	Albuquerque
231	Albuquerque
617	Albuquerque
768	Albuquerque
818	Albuquerque
405	Belen
581	Carlsbad
996	Clovis
939	Espanola
254	Las Cruces
461	Las Vegas

364	Roswell
131	Roswell
33	Roswell
882	Ruidoso

7. Accepted Bids On Licenses. Following the closing of the Fleming Sale, the Debtor received bids on certain of the above liquor licenses, and accepted the following bids subject to agreement between the Debtor and purchaser on a form of agreement for purchase and sale of the license and court approval:

<u>License #</u>	<u>City</u>	<u>Buyer</u>	<u>Purchase Price</u>
581	Carlsbad	Allsup's	\$ 180,000
996	Clovis	Town & Country	\$ 206,000
4047	Farmington	Pik Quick	\$ 290,000
4051	Albuquerque	Pik Quick	\$ 290,000
4069	Farmington	Town & Country	\$ 290,000
254	Las Cruces	TD Industries, Inc.	\$ 275,000
461	Las Vegas	TLH	\$ 185,000
364	Roswell	Town & Country	\$ 180,000
131	Roswell	Allsup's	\$ 180,000
33	Roswell	MAL Enterprises, Inc.	\$ 190,000 (subject to adjustment)
882	Ruidoso	Brewer Oil Co	\$ 206,000

The above eleven liquor licenses hereafter are called the "Licenses." The purchase prices for the Licenses set forth in paragraph 7 above (the "Purchase Prices") are fair and reasonable, and are the result of a fairly conducted competitive bidding process.

8. Contract for Sale of Licenses. Attached hereto as Exhibit A is a form of contract (the "Specimen Contract") the Debtor has proposed to the buyers set forth in paragraph 7 above other than MAL Enterprises, Inc. (the "Buyers") for the purchase and sale of the Licenses. It is in the best interest of the estate and creditors as a whole for the Debtor to sell the Licenses to the Buyers for the Purchase Prices on terms and conditions substantially similar to the terms and conditions set forth in the Specimen Contract or on such other terms and conditions as Debtor in

the exercise of its business judgment may determine.

9. Contract for Sale of License to MAL. Attached hereto as Exhibit B is a form of contract for the sale of License No. 33 by the Debtor to MAL Enterprises, Inc. ("MAL"). It is in the best interest of the estate and creditors as a whole for the Debtor to sell License No. 33 for the purchase price and on terms and conditions substantially similar to the terms and conditions set forth in Exhibit B hereto.

10. Sale of Equipment to MAL. The Debtor and MAL have reached an agreement, subject to Court approval, for the Debtor to sell all equipment it owns located at Store 908, 900 W. Second Street in the City of Roswell, New Mexico, to MAL for the sum of \$30,000 payable in cash (or a cash equivalent), as is, where is. The Debtor seeks approval of such sale.

11. Further sales of Liquor Licenses. To maximize the value of the estate, in addition to selling the Licenses, Debtor wishes to promptly and efficiently negotiate and consummate as many sales of liquor licenses not sold as part of the Fleming Sale, other than the Licenses (the "Other Licenses"). In light of the potentially significant costs and delays associated with seeking and obtaining court approval of each sale of the Other Licenses (e.g., preparing motion papers; serving notice upon creditors; preparing for and appearing at hearings; and delaying the sales pending the expiration of notice periods, and hearings, if necessary), the Debtor requests that the Court establish certain uniform procedures by which the Debtor may seek approval of the sales of Other Licenses. The Debtor submits that its requested procedures are desirable and in the best interests of the Debtor's estate and creditors in that it will maximize the likelihood that the Debtor can timely negotiate and consummate the Other Licenses, while simultaneously protecting the legitimate interests of the estate's creditors.

12. The Requested Procedures for Sales of Other Liquor Licenses. The Debtor proposes that the sales of Other Licenses be conducted in accordance with the following procedures:

(a) As soon as practicable after the Debtor's negotiation of an agreement for a sale of an Other License, the Debtor would submit to Heller Financial, Inc. and Metropolitan Life Insurance Company (together, the "Lenders") and to the Unsecured Creditors Committee (the "Committee"), through their counsel, a copy of the proposed contract for the purchase and sale of the Other License in question (the "Proposed Contract"). The Lenders and Committee would be permitted five (5) business days from receipt of the Proposed Contract to review it. If the Lenders and Committee (x) affirmatively assent to the sale of the Other License pursuant to the terms and conditions of the Proposed Contract (the "Proposed Sale") or (y) fail to notify the Debtor in writing of any objection to the Proposed Sale or (z) timely object(s) to the Proposed Sale but withdraws for any reason its or their objection to such sale, the Debtor would be authorized to consummate the Proposed Sale without notice and a hearing or entry of a further order of the Court.

(b) If the either of the Lenders or the Committee timely objects to the Proposed Sale and does not withdraw its or their objection, the Debtor would have the option of (i) foregoing consummation of the Proposed Sale that is the subject of such objection, (ii) modifying the terms of the Proposed Sale in a way that results in Lenders and Committee withdrawing its or their objection, or (iii) seeking an order of the Court authorizing the Debtor to consummate the Proposed Sale over such objection, with notice of the hearing limited to the Lenders, Committee and United States Trustee.

13. Sales to be Made Free and Clear of Liens. All sales of Licenses, Other Licenses, and equipment located in store 908 will be made free and clear of any lien, claim, interest or encumbrance (collectively, "Interests") of any entity in the Licenses, Other Licensees, and such equipment. Any party asserting an Interest in the Licenses, Other Licensees, and such equipment will be protected by having its Interest attach to the net proceeds of the sale(s), subject to any claims and defenses the Debtor may possess with respect thereto.

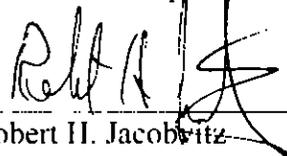
14. Procedure for Payment of Wholesalers and Taxes, and Issuance of Clearances. The terms of the Order Regarding Payment of Liquor Wholesalers and Transfers of Liquor Licenses, filed August 31, 2001, would apply to payment of the claims of liquor wholesalers and the New Mexico Department of Taxation and Revenue as it relates to each such license, and such entities providing clearances, with appropriate modifications of the dates by which clearances would be given and payments made (to be set forth in the order resulting from the filing of this motion).

15. Debtor's Authority. Debtor seeks a provision in the order resulting from this motion providing that the Debtor is authorized under 11 U.S.C. § 363(b) to execute all agreements for the purchase and sale of Licenses and Other Licenses approved by such order; and to consummate all transactions contemplated by such agreement; and to take any action and execute and deliver any additional instrument or documents that may be reasonably necessary, desirable, or appropriate to implement such transactions, to effect the sales of the Licenses and Other Licenses, to cause the closings of such sales to occur, and to perform the Debtor's obligations under the agreements.

WHEREFORE, the Debtor respectfully requests that the Court enter an order (i)

approving the sale of the Licenses free and clear of liens as requested in paragraphs 7, 8, 13, 14, and 15; (ii) approving the sale of the License No. 33 to MAL free and clear of liens as requested in paragraphs 9, 13, 14 and 15; (iii) approving the sale of the equipment to MAL free and clear of liens as requested in paragraphs 10 and 13; (iv) establishing procedures for approval and consummation of sales of Other Licenses free and clear of liens as requested in paragraphs 11, 12, 13 14, and 15; and (v) establishing procedures for payment of the claims of liquor wholesalers and the New Mexico Department of Taxation and Revenue as it relates to Licenses and Other License, and such entities providing clearances, as requested in paragraph 14; and (vi) granting the Debtor such other and further relief as is just and proper.

JACOBVITZ THUMA & WALKER  
a Professional Corporation

By  \_\_\_\_\_

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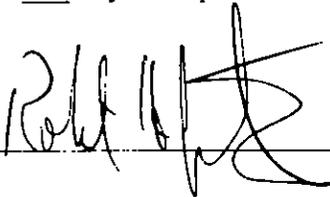
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315 Fifth Street  
Albuquerque, New Mexico 87102

this 27<sup>th</sup> day of September, 2001.



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**AGREEMENT FOR PURCHASE AND SALE OF LIQUOR LICENSE**

Agreement made as of the \_\_\_ day of September, 2001, by and between Furr's Supermarkets, Inc., a Delaware corporation ("Seller"), and \_\_\_\_\_ ("Buyer").

For valuable consideration, Seller and Buyer agree as follows:

1. Definitions.

"AGD" means New Mexico Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico.

"Bankruptcy Case" means a bankruptcy case pending before the United States Bankruptcy Court for the District of New Mexico, assigned case no. 11-01-10779 SA in which Seller is the Debtor.

"Bankruptcy Court" means the court presiding over the Bankruptcy Case.

"Bankruptcy Court Approval" is defined in paragraph 19.

"Buyer" means \_\_\_\_\_.

"Clearances" means a tax clearance and a wholesaler clearance, both in a form sufficient to obtain AGD approval of transfer of ownership and location of the License.

"Closing" is defined in paragraph 13.

"Closing Date" is defined in paragraph 13.

"Earnest Money" is defined in paragraph 3(b).

"Escrow Agent" means Jacobvitz, Thuma & Walker, P.C., or any successor escrow agent approved by Seller and Purchaser, or designated by the Bankruptcy Court.

"Extension Period" is defined in paragraph 4(b).

"License" means New Mexico Liquor License No. \_\_\_\_\_ presently located in the City of \_\_\_\_\_, New Mexico.

**EXHIBIT**

A

"Purchase Price" is defined in paragraph 3(a).

"Seller" means Furr's Supermarkets, Inc., a Delaware corporation.

2. Sale of Liquor License. Seller owns the License. Seller agrees to sell the License to Buyer. Seller and Buyer acknowledge that the License will permit Buyer to sell alcoholic beverages for consumption off of the licensed premises.

3. Purchase Price and Terms.

(a) The purchase price for the License ("Purchase Price"), is \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00).

(b) Upon execution of this Agreement, Buyer shall deposit **[insert 10% of purchase price]** (\$\_\_\_\_\_.00) as earnest money (the "Earnest Money") into a trust account maintained by Escrow Agent. The Earnest Money shall be disbursed by Escrow Agent as provided in this Agreement.

(c) Seller will deposit the balance of the Purchase Price in cash or a cash equivalent with Escrow Agent on the later of (i) the date Seller obtains Clearances, and provides a copy to Buyer in a form that will be acceptable to the AGD or (ii) within three (3) business days after the hearing before the City of \_\_\_\_\_; provided however, that the License will not be issued to Buyer prior to such deposit of the balance of the Purchase Price. Escrow Agent is instructed to disburse the Purchase Price to Seller (or its designees) after AGD's issuance of the License to Buyer.

4. Transfer of Ownership and Location.

(a) Within twenty (20) days after the date of this Agreement, Buyer will file with AGD an application for transfer to Buyer of ownership and location of the License pursuant to the terms of this Agreement. Buyer will use all reasonable efforts to pursue all required approvals of the

transfer of ownership and location of the License in a diligent and timely manner. Buyer will comply with all requirements of law applicable to Buyer relating to the transfer of ownership and location of the License, and will comply with all reasonable requirements of hearing officers. Seller will provide the Clearances that are needed to obtain the transfer of ownership and location of the License by the AGD.

(b) If Buyer has not obtained final approval of the transfer of ownership and location by AGD (and by the City of \_\_\_\_\_, to the extent required) on or before one hundred twenty (120) days after filing the transfer of ownership and location application, either party may terminate this Agreement by written notice if the party terminating has diligently pursued its obligations under this Agreement. The Earnest Money and accrued interest will be refunded to Buyer if this Agreement is terminated because Buyer is unable, despite its reasonable efforts, to obtain final approval of the transfer of ownership and location by AGD (and by the City of \_\_\_\_\_, to the extent required) on or before one hundred twenty (120) days after filing of the transfer of ownership and location application. Buyer has the option of extending such 120-day period for an additional 60 days (the "Extension Period") by depositing an additional 5% of the Purchase Price with the Escrow Agent, as additional Earnest Money, prior to the expiration of such 120-day period.

5. Seller's Warranties, Covenants and Representations. Seller warrants, covenants and represents to Buyer that:

(a) Seller owns the License and, subject to paragraph 19 below: (i) has the right to convey the License, and (ii) will deliver the License to Buyer at Closing free and clear of all claimed liens.

(b) The License is valid and will remain valid until Closing. Seller will not do any act that would affect the validity of the License or cause its cancellation or revocation.

(c) Seller has not performed any act or omission relating to the License that violates any applicable statutes, ordinances or regulations. Seller will not perform any such act or make any such omissions during the term of this Agreement.

(d) Seller has not retained a broker in connection with this transaction.

(e) Seller will fully cooperate with Buyer with respect to Buyer seeking approvals required for the transfer of the License.

6. Seller's Use of License. If, any time before Closing, Seller is charged with any violation of the New Mexico Liquor Control Act or AGD Regulations with respect to the ownership or use of the License, Seller will immediately notify Buyer of the existence of such charges and will immediately take all steps necessary to rectify, at its sole cost and expense, any such violation.

7. Buyer's Warranties, Covenants and Representations. Buyer warrants, covenants and represents to Seller that:

(a) Buyer is qualified to do business in the State of New Mexico.

(b) Buyer will pay the balance of the Purchase Price upon satisfaction of all Buyer's conditions precedent to Closing.

8. Buyer's Conditions Precedent to Closing. The obligations of Buyer to close this transaction, unless waived by Buyer, are subject to the following conditions:

(a) By the Closing Date, Buyer has obtained all necessary approvals of the transfer of ownership and location of the License by the AGD (and City of \_\_\_\_\_, to the extent required).

The representations and warranties of Seller as provided in this Agreement are  
(b) as of the time of execution of this Agreement and are still true at the time of

true and cor

(c) Seller has provided a tax clearance to the Buyer, or to AGD with a copy to  
certifying that no taxes related to the License are due or owing in a form sufficient to obtain  
approval by AGD of the transfer of ownership and location of the License to Buyer.

(d) Seller has provided Buyer, or to AGD with a copy to Buyer, with  
certifications by the liquor wholesalers or other evidence indicating that no amounts are due on  
account of the License sufficient to satisfy AGD.

(e) Seller has obtained Bankruptcy Court Approval.

9. Seller's Conditions Precedent to Closing. The obligations of Seller to close this  
transaction, unless waived by Seller, are subject to the following conditions:

(a) By the Closing Date, Buyer has obtained all necessary approvals of the  
transfer of ownership and location of the License by the AGD (and City of \_\_\_\_\_ to the

extent required).

(b) The representations and warranties of Buyer as provided in this Agreement  
are true and correct as of the time of execution of this Agreement and are still true at the time of  
Closing.

(c) Buyer has paid the Earnest Money in accordance with this Agreement.

(d) Buyer has paid the balance of the Purchase Price to Escrow Agent in  
accordance with this Agreement.

(e) Seller has obtained Bankruptcy Court Approval.

10. Seller's Default/Return of Earnest Money. If Seller breaches any of the terms of this Agreement, Buyer may terminate this Agreement by giving notice of termination within fifteen (15) days after it learns of the breach, and receive a refund of the Earnest Money, and can sue for damages (not to exceed the amount of the Earnest Money). If Buyer fails to give timely notice of termination, the breach shall be deemed waived. In addition, if a condition precedent to Seller's or Buyer's obligations to close fails to occur and is not waived by the party entitled to waive it, and Buyer is not then in breach of any of the terms of this Agreement, then Buyer shall receive a refund of the Earnest Money.

11. Buyer's Default. If Buyer breaches any of the terms of this Agreement, Seller may terminate this Agreement by giving notice of termination within fifteen (15) days after it learns of the breach, and receive the Earnest Money as liquidated damages as its sole and exclusive remedy, in which event neither party will have any further obligations or liability to the other. If Seller fails to give timely notice of termination, the breach shall be deemed waived (except no such waiver will relieve Buyer of its obligation to pay the Purchase Price).

12. Closing. Closing of the sale of the License ("Closing") will occur as soon after final approval of the transfer of ownership and location of the License to Buyer by the AGD as is reasonable possible for the Escrow Agent.

13. Notices. All notices, requests, demands and other communications given as provided in this Agreement will be in writing and will be deemed duly given, if delivered, or if mailed, by prepaid certified or registered mail, to:

(a) Seller c/o Robert Jacobvitz, Esq., Jacobvitz, Thuma, & Walker, P.C. 500 Marquette NW, Suite 650, Albuquerque, New Mexico 87102.

(b) Buyer at \_\_\_\_\_:

or to such other person and/or address as specified in a written notice given by one party to the other.

14. Commissions, Fees and Expenses. Buyer agrees to pay any and all application or transfer fees and expenses required by the State of New Mexico and City of \_\_\_\_\_ to effect this transaction. Each party agrees to pay its own attorney fees. Each party will pay their respective brokers, if any, in connection with this Agreement.

15. Amendments/Governing Law. This Agreement may be modified or amended only by a written document signed by Seller and Buyer. This Agreement is governed by the laws of New Mexico, constitutes the entire agreement of Seller and Buyer, and binds and benefits Seller and Buyer, their heirs, personal representatives, successors and assigns.

16. Force Majeure. Neither Seller nor Buyer will be liable for any failure to perform any provision hereof because of fire or other casualty, riot, strike, natural disaster, governmental regulation or restriction.

17. No Merger. All representations and warranties contained in this Agreement shall survive the Closing.

18. Escrow.

(a) Seller and Buyer appoint Escrow Agent as escrow agent for the purposes and upon the terms and conditions set forth in this Agreement. Escrow Agent is authorized to close as soon after the final approval of the transfer of ownership and location of the License to Buyer as is reasonably possible. Closing is complete upon distribution of the funds deposited with the Escrow Agent to Seller, and as necessary to obtain the Clearances. The Escrow Agent shall deposit escrowed funds in a federally insured financial institution in an interest bearing account. If the Earnest Money is to be disbursed to Seller, the income earned on the escrowed funds shall be paid to Seller. If the Earnest Money is to be applied to the Purchase Price upon closing, the income earned

on the Earnest Money shall be credited against the Purchase Price. Buyer shall be responsible for filing all necessary tax returns for any interest or income paid or attributed to it hereunder and shall pay any taxes thereon. All entities entitled to receive interest from the escrow account shall provide Escrow Agent with a W-9 or W-8 IRS tax form prior to disbursement of interest. Escrow Agent may resign from its duties hereunder at any time by giving written notice of such resignation to Seller and Buyer specifying a date, not less than sixty (60) days after giving of such notice, when such resignation shall take effect. If a successor agent has not been appointed within such 60 day period, the Escrow Agent may petition any court of competent jurisdiction or may interplead the parties in a proceeding for the appointment of a successor Escrow Agent.

(b) Escrow Agent undertakes to perform only such duties as are specifically set forth in this Agreement. Escrow Agent acting in good faith shall not be liable for any mistake of fact or error in judgment by it or for any act or omission by it of any kind unless caused by willful misconduct or gross negligence, and shall be entitled to rely conclusively upon (i) any written notice, instrument or signature believed by it to be genuine and to have been signed or presented by the proper party or parties duly authorized to do so, and (ii) the advice of counsel retained by it.

(c) If any controversy arises between Seller and Buyer with respect to the subject matter of this Agreement, Escrow Agent shall not be required to determine the same or take any action with respect thereto, but may await the final resolution of any such controversy, anything in the instructions delivered by the parties hereto to the contrary notwithstanding, and in such event Escrow Agent shall not be liable for interest or damage; provided that with respect to any controversy between Seller and Buyer, Escrow Agent shall, at all times, have full right and authority to pay over and disburse the escrowed funds in accordance with the joint written instructions signed by Seller and Buyer.

(d) Seller and Buyer may, by mutual written agreement at any time on at least sixty (60) days prior written notice to Escrow Agent, remove Escrow Agent as escrow agent under this Agreement, and substitute a successor escrow agent, in which event, upon receipt of such written notice thereof, Escrow Agent will deliver to such substituted escrow agent the Escrow Fund held by it, and Escrow Agent shall thereafter be discharged from any and all liability.

19. Bankruptcy Court Approval. Buyer acknowledges that Seller has disclosed that it is a Debtor in a bankruptcy case pending before the United States Bankruptcy Court for the district of New Mexico, assigned case no. 11-01-10779 SA (the "Bankruptcy Case"). Within five (5) business days after Seller and Buyer both have executed this Agreement, Seller will file a motion in the Bankruptcy Case seeking authority from the Bankruptcy Court to consummate the transaction set forth in the Agreement, on the terms and conditions specified herein ("Bankruptcy Court Approval"), and will serve notice of the Motion on the parties to whom such notice is required. The enforceability of this Agreement is conditioned upon entry of an order in the Bankruptcy Case authorizing Seller to sell the License to Buyer pursuant to the terms of this Agreement, free and clear of liens.

**SELLER:**

**BUYER:**

FURR'S SUPERMARKETS, INC.  
a Delaware corporation

a \_\_\_\_\_ corporation

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

## LEASE PURCHASE AGREEMENT

Agreement made as of the \_\_\_ day of September, 2001, by and between Furr's Supermarkets, Inc., a Delaware corporation ("Seller"), and MAL Enterprises, Inc., a Texas corporation ("Buyer").

For valuable consideration, Seller and Buyer agree as follows:

1. Definitions.

"AGD" means New Mexico Alcohol and Gaming Division of the Regulation and Licensing Department of the State of New Mexico.

"*Bankruptcy Case*" means a bankruptcy case pending before the United States Bankruptcy Court for the District of New Mexico, assigned case no. 11-01-10779 SA in which Seller is the Debtor.

"*Bankruptcy Court*" means the court presiding over the Bankruptcy Case.

"*Bankruptcy Court Approval*" is defined in paragraph 19.

"*Buyer*" means MAL Enterprises, Inc., a Texas corporation.

"*Clearances*" is defined in paragraph 3(a).

"*Closing*" is defined in paragraph 13.

"*Closing Date*" is defined in paragraph 13.

"*Earnest Money*" is defined in paragraph 3(b).

"*Escrow Agent*" means Jacobvitz, Thuma & Walker, P.C., or any successor escrow agent approved by Seller and Purchaser, or designated by the Bankruptcy Court.

"*License*" means New Mexico Liquor License No. 33 presently located in the City of Roswell, New Mexico.

"*Purchase Price*" is defined in paragraph 3(a).

"*Seller*" means Furr's Supermarkets, Inc., a Delaware corporation.

**EXHIBIT**  
B

2. Sale and Lease of Liquor License. Seller owns the License. Seller agrees to lease the License to Buyer on an interim basis (pending approval, by all government units whose approval is required, of the transfer of ownership of the License to Buyer) and, agrees to sell the License to Buyer. ~~Seller and Buyer~~ acknowledge that the License will permit Buyer to sell alcoholic beverages

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for consumption off of the licensed premises. The term of the lease of the License will be from the date that AGD approves the lease until the date that AGD grants final approval of the transfer of ownership of the License to Buyer. There will be no lease payments for the lease of the License.

3. Purchase Price and Terms.

(a) The purchase price for the License ("Purchase Price"), is One Hundred Ninety Thousand and 00/100 Dollars (\$190,000.00) if Seller is able to obtain Bankruptcy Court Approval prior to November 1, 2001 and is able to obtain a tax clearance and a wholesaler clearance, both in a form sufficient to obtain approval of an interim lease of the License (the "Clearances"), prior to November 1, 2001. The Purchase Price will decrease by Ten Thousand Dollars (\$10,000.00) if the Bankruptcy Court Approval and the Clearances are obtained after November 1, 2001, and on or before November 15, 2001 and will decrease by an additional Ten Thousand Dollars (\$10,000.00) if the Bankruptcy Court Approval and the Clearances are obtained after November 15, 2001.

(b) Buyer may terminate this Agreement, by giving notice of termination prior to Seller obtaining Bankruptcy Court Approval and the Clearances, if the Bankruptcy Court Approval and the Clearances are not obtained by November 1, 2001. If Buyer terminates this Agreement because the Bankruptcy Court Approvals and the Clearances are not obtained by November 1, 2001, the Earnest Money plus any accrued interest will be refunded to Buyer. Payments shall be made as follows:

(c) Upon execution of this Agreement, Buyer shall deposit Nineteen Thousand Dollars (\$19,000.00) as earnest money (the "Earnest Money") into a trust account maintained by Escrow Agent. The Earnest Money shall be disbursed by Escrow Agent as provided in this Agreement.

(d) Seller will deposit the balance of the Purchase Price in cash or a cash equivalent with Escrow Agent on the later of (i) the date Seller obtains Clearances and provides a copy to Seller, in a form acceptable to the AGD, or (ii) October 29, 2001. Escrow Agent is instructed to disburse the Purchase Price to Seller (or its designees) on the date AGD approves the lease of the License to Buyer or on the date AGD gives final approval of the transfer of ownership of the License to Buyer, whichever is earlier.

#### 4. Transfer of Ownership and Lease.

(a) Within fifteen (15) days after the date of this Agreement, Buyer will file with AGD an application for transfer to Buyer of ownership of the License, and the lease of the License, all pursuant to the terms of this Agreement. Buyer will use all reasonable efforts to pursue all required approvals of the transfer of ownership, and lease of the License in a diligent and timely manner. Buyer will comply with all requirements of law applicable to Buyer relating to the transfer of ownership and the lease of the License, and will comply with all reasonable requirements of hearing officers. Seller will provide the Clearances that are needed to obtain approval of the lease of the License and the transfer of ownership of the License by the AGD.

(b) If Buyer has not obtained either approval of an interim lease of the License or final approval of the transfer of ownership by AGD (and by the City of Roswell, to the extent required) on or before one hundred eighty (180) days after filing the transfer of ownership and lease applications, either party may terminate this Agreement by written notice if the party terminating has

diligently pursued its obligations under this Agreement. The Earnest Money and accrued interest will be refunded to Buyer if this Agreement is terminated because Buyer is unable, despite its reasonable efforts, to obtain approval of an interim lease of the License or final approval of the transfer of ownership by AGD (and by the City of Roswell, to the extent required) on or before one hundred eighty (180) days after filing of the transfer of ownership and lease applications.

5. Seller's Warranties, Covenants and Representations. Seller warrants, covenants and represents to Buyer that:

(a) Seller owns the License and, subject to paragraph 19 below: (i) has the right to convey the License, and (ii) will deliver the License to Buyer at Closing free and clear of all claimed liens.

(b) The License is valid and will remain valid until Closing. Seller will not do any act that would affect the validity of the License or cause its cancellation or revocation.

(c) Seller has not performed any act or omission relating to the License that violates any applicable statutes, ordinances or regulations. Seller will not perform any such act or make any such omissions during the term of this Agreement.

(d) Seller has not retained a broker in connection with this transaction.

(e) Seller will fully cooperate with Buyer with respect to Buyer seeking approvals required for the lease and transfer of the License.

6. Seller's Use of License. If, any time before Closing, Seller is charged with any violation of the New Mexico Liquor Control Act or AGD Regulations with respect to the ownership or use of the License, Seller will immediately notify Buyer of the existence of such charges and will immediately take all steps necessary to rectify, at its sole cost and expense, any such violation.

7. Buyer's Warranties, Covenants and Representations. Buyer warrants, covenants and represents to Seller that:

(a) Buyer is qualified to do business in the State of New Mexico.

(b) Buyer will pay the balance of the Purchase Price upon satisfaction of all Buyer's conditions precedent to Closing.

8. Buyer's Conditions Precedent to Closing. The obligations of Buyer to close this transaction, unless waived by Buyer, are subject to the following conditions:

(a) By the Closing Date, Buyer has obtained all necessary approvals of the transfer of ownership and operation of the License by the AGD (and City of Roswell, to the extent required) or has obtained approval of an interim lease of the License.

(b) The representations and warranties of Seller as provided in this Agreement are true and correct as of the time of execution of this Agreement and are still true at the time of Closing.

(c) Seller has provided a tax clearance to the Buyer or AGD certifying that no taxes related to the License are due or owing in a form sufficient to obtain final approval by AGD of the transfer of ownership of the License to Buyer or to obtain approval of an interim lease of the License to Buyer.

(d) Seller has provided Buyer or AGD with certifications by the liquor wholesalers or other evidence indicating that no amounts are due on account of the License sufficient to satisfy AGD.

(e) Seller has obtained Bankruptcy Court Approval.

9. Seller's Conditions Precedent to Closing. The obligations of Seller to close this transaction, unless waived by Seller, are subject to the following conditions:

(a) By the Closing Date, Buyer has obtained all necessary approvals of the transfer of ownership and operation of the License by the AGD (and City of Roswell, to the extent required) or has obtained approval of an interim lease of the License.

(b) The representations and warranties of Buyer as provided in this Agreement are true and correct as of the time of execution of this Agreement and are still true at the time of Closing.

(c) Buyer has paid the Earnest Money in accordance with this Agreement.

(d) Buyer has paid the balance of the Purchase Price to Escrow Agent in accordance with this Agreement.

(e) Seller has obtained Bankruptcy Court Approval.

10. Seller's Default/Return of Earnest Money. If Seller breaches any of the terms of this Agreement, Buyer may terminate this Agreement by giving notice of termination within fifteen (15) days after it learns of the breach, and receive a refund of the Earnest Money, and can sue for damages (not to exceed the amount of the Earnest Money). If Buyer fails to give timely notice of termination, the breach shall be deemed waived. In addition, if a condition precedent to Seller's or Buyer's obligations to close fails to occur and is not waived by the party entitled to waive it, and Buyer is not then in breach of any of the terms of this Agreement, then Buyer shall receive a refund of the Earnest Money.

11. Buyer's Default. If Buyer breaches any of the terms of this Agreement, Seller may terminate this Agreement by giving notice of termination within fifteen (15) days after it learns of the breach, and receive the Earnest Money as liquidated damages as its sole and exclusive remedy, in which event neither party will have any further obligations or liability to the other. If Seller fails

to give timely notice of termination, the breach shall be deemed waived (except no such waiver will relieve Buyer of its obligation to pay the Purchase Price).

12. Closing. Closing of the sale of the License ("Closing") will occur as soon after approval of the interim lease of the License to Buyer as is reasonably possible for Escrow Agent or as soon after final approval of the transfer of ownership of the License to Buyer by the AGD as is reasonably possible for the Escrow Agent, whichever approval is earlier.

13. Notices. All notices, requests, demands and other communications given as provided in this Agreement will be in writing and will be deemed duly given, if delivered, or if mailed, by prepaid certified or registered mail, to:

(a) Seller c/o Robert Jacobvitz, Esq., Jacobvitz, Thuma, & Walker, P.C. 500 Marquette NW, Suite 650, Albuquerque, New Mexico 87102.

(b) Buyer at 1219 East Broadway, Sweetwater, Texas 79556, with a copy to Paul L. Cannon, Esq., McMahon, Surovik, Suttle, Buhmann, Hicks & Gill, P.C., 400 Pine Street, Suite 800, Abilene, Texas 79601;

or to such other person and/or address as specified in a written notice given by one party to the other.

14. Commissions, Fees and Expenses. Buyer agrees to pay any and all application or transfer fees and expenses required by the State of New Mexico and City of Roswell to effect this transaction. Each party agrees to pay its own attorney fees. There are no commissions and fees payable to any broker in connection with this Agreement.

15. Amendments/Governing Law. This Agreement may be modified or amended only by a written document signed by Seller and Buyer. This Agreement is governed by the laws of New Mexico, constitutes the entire agreement of Seller and Buyer, and binds and benefits Seller and Buyer, their heirs, personal representatives, successors and assigns.

16. Force Majeure. Neither Seller nor Buyer will be liable for any failure to perform any provision hereof because of fire or other casualty, riot, strike, natural disaster, governmental regulation or restriction.

17. No Merger. All representations and warranties contained in this Agreement shall survive the Closing.

18. Escrow.

(a) Seller and Buyer appoint Escrow Agent as escrow agent for the purposes and upon the terms and conditions set forth in this Agreement. Escrow Agent is authorized to close as soon after approval of an interim lease of the License to Buyer as is reasonably possible or as soon after the final approval of the transfer of ownership of the License to Buyer as is reasonably possible, whichever approval is earlier. Closing is complete upon distribution of the funds deposited with the Escrow Agent to Seller, and as necessary to obtain the Clearances. The Escrow Agent shall deposit escrowed funds in a federally insured financial institution in an interest bearing account. If the Earnest Money is to be disbursed to Seller, the income earned on the escrowed funds shall be paid to Seller. If the Earnest Money is to be applied to the Purchase Price upon closing, the income earned on the Earnest Money shall be credited against the Purchase Price. Buyer shall be responsible for filing all necessary tax returns for any interest or income paid or attributed to it hereunder and shall pay any taxes thereon. All entities entitled to receive interest from the escrow account shall provide Escrow Agent with a W-9 or W-8 IRS tax form prior to disbursement of interest. Escrow Agent may resign from its duties hereunder at any time by giving written notice of such resignation to Seller and Buyer specifying a date, not less than sixty (60) days after giving of such notice, when such resignation shall take effect. If a successor agent has not been appointed within such 60 day period, the Escrow Agent may petition any court of competent jurisdiction or

may interplead the parties in a proceeding for the appointment of a successor Escrow Agent.

(b) Escrow Agent undertakes to perform only such duties as are specifically set forth in this Agreement. Escrow Agent acting in good faith shall not be liable for any mistake of fact or error in judgment by it or for any act or omission by it of any kind unless caused by willful misconduct or gross negligence, and shall be entitled to rely conclusively upon (i) any written notice, instrument or signature believed by it to be genuine and to have been signed or presented by the proper party or parties duly authorized to do so, and (ii) the advice of counsel retained by it.

(c) If any controversy arises between Seller and Buyer with respect to the subject matter of this Agreement, Escrow Agent shall not be required to determine the same or take any action with respect thereto, but may await the final resolution of any such controversy, anything in the instructions delivered by the parties hereto to the contrary notwithstanding, and in such event Escrow Agent shall not be liable for interest or damage; provided that with respect to any controversy between Seller and Buyer, Escrow Agent shall, at all times, have full right and authority to pay over and disburse the escrowed funds in accordance with the joint written instructions signed by Seller and Buyer.

(d) Seller and Buyer may, by mutual written agreement at any time on at least sixty (60) days prior written notice to Escrow Agent, remove Escrow Agent as escrow agent under this Agreement, and substitute a successor escrow agent, in which event, upon receipt of such written notice thereof, Escrow Agent will deliver to such substituted escrow agent the Escrow Fund held by it, and Escrow Agent shall thereafter be discharged from any and all liability.

19. Bankruptcy Court Approval. Buyer acknowledges that Seller has disclosed that it is a Debtor in a bankruptcy case pending before the United States Bankruptcy Court for the district of New Mexico, assigned case no. 11-01-10779 SA (the "Bankruptcy Case"). Within five

(5) business days after Seller and Buyer both have executed this Agreement, Seller will file a motion in the Bankruptcy Case seeking authority from the Bankruptcy Court to consummate the transaction set forth in the Agreement, on the terms and conditions specified herein ("Bankruptcy Court Approval"), and will serve notice of the Motion on the parties to whom such notice is required. The enforceability of this Agreement is conditioned upon entry of an order in the Bankruptcy Case authorizing Seller to sell the License to Buyer pursuant to the terms of this Agreement, free and clear of liens.

**SELLER:**

**BUYER:**

FURR'S SUPERMARKETS, INC.  
a Delaware corporation

MAL ENTERPRISES, INC.,  
a Texas corporation

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date: \_\_\_\_\_