

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT  
ALBUQUERQUE, NM

In re:

FURR'S SUPERMARKETS, INC.,

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

Debtor.

**MOTION TO REJECT UNEXPIRED REAL ESTATE LEASE OF WAREHOUSE  
IN ALBUQUERQUE, NEW MEXICO**

Furr's Supermarkets, Inc. (the "Debtor") moves for an order under 11 U.S.C. § 365(a) approving its rejection of a certain unexpired lease of a warehouse on Rio Grande Boulevard in Albuquerque, New Mexico. In support of this Motion, the Debtor states as follows:

1. On February 8, 2001 (the "Petition Date"), the Debtor filed a voluntary petition in this Court under chapter 11 of title 11 of the United States Bankruptcy Code. 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 approval under 11 U.S.C. § 365(a) of its rejection of a lease dated January 29, 2001 between the Debtor as tenant and L & V Corporation, a New Mexico corporation, as landlord, for the real property located at 820-830 Rio Grande Blvd, N.W., Albuquerque, New Mexico (the "Lease"). The Debtor will surrender the leased property as of midnight on September 30, 2001.

3. The Lease is costly to maintain, unnecessary, and burdensome to the Debtor's ongoing operations and business, and constitutes an unnecessary drain on the Debtor's cash resources and other assets.

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4. The Debtor's rental obligation under the Lease is approximately \$10,830.63 per month. In addition, the Lease obligates the Debtor to insure, perform certain maintenance on, and incur other related charges associated with the leased property. The Debtor has determined in its reasonable business judgment that these costs constitute a substantial and unnecessary drain on the Debtor's cash resources and other assets. By rejecting the Lease now, the Debtor will avoid unnecessary administrative charges that provide no benefit to the estate, creditors, or interest holders.

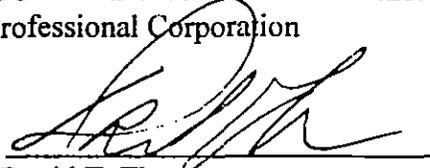
5. For these reasons, the rejection of the Lease is in the best interests of the Debtor's estate, creditors, and interest holders.

6. Under Bankruptcy Code § 365(a), a debtor "subject to the court's approval, may assume or reject an executory contract or an unexpired lease." Most courts hold that a debtor's decision whether to assume or reject a lease is subject to review under the business judgment standard. A debtor satisfies this standard if it shows in its reasonable business judgment that rejection will benefit the estate. See In re Mile Hi Metal Systems, Inc., 899 F.2d 887, 896 n.13 (10th Cir. 1990) (Seymour, J. concurring) (so-called "business judgment" test applies to ordinary executory contracts); In re Federated Dept. Stores, Inc., 131 B.R. 808, 811 (S.D. Ohio 1991) ("Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases"); 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). If a

debtor has exercised its business judgment reasonably, the court should approve the proposed assumption or rejection. Sharon Steel Corp. v. National Fuel Gas Distribution, 872 F.2d 36, 39-40 (3d Cir. 1989).

WHEREFORE, the Debtor respectfully requests that the Court enter an order approving the Debtor's rejection of the Lease, effective as of September 30, 2001, and granting all other just and proper relief.

JACOBVITZ THUMA & WALKER  
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This certifies that on September 28, 2001,  
a copy of this motion was mailed by  
first class United States mail to:

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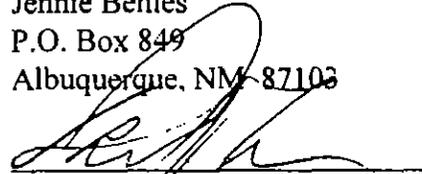
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A handwritten signature in black ink, appearing to read 'David T. Thuma', written over a horizontal line.

David T. Thuma