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U.S. BANKRUPTCY COURT
ALBUQUERQUE, NM

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

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

Debtor.

DEBTOR'S MOTION TO (i) ASSUME AND ASSIGN CERTAIN UNEXPIRED REAL ESTATE LEASES AND ASSOCIATED SUBLEASE, AND (ii) SELL CERTAIN PERSONAL PROPERTY TO SAFEWAY INC. (STORES 877, 893, AND 909)

Furr's Supermarkets, Inc. (the "Debtor") moves for an order (i) under 11 U.S.C. § 365(a) and (f) approving its assumption and assignment of certain unexpired leases of nonresidential real property and an associated sublease to Safeway Inc. ("Safeway"), and (ii) under 11 U.S.C. § 363(b)(1) and (f) allowing Furr's to sell certain personal property to Safeway. In support of this Motion, the Debtor states:

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 11 U.S.C. §§ 1107(a) and 1108.

Assumption and Assignment

2. The Debtor requests approval under 11 U.S.C. § 365(a) and (f) of its assumption and assignment to Safeway of the three real property leases for the Debtor's former grocery stores described in Exhibit A hereto (the "Leases"), together with the

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associated sublease that is identified on Exhibit A.

3. As part of the proposed assumption and assignment of the Leases, the Debtor proposes that the defaults under the Leases be cured pursuant to the payment by Safeway of the amounts set forth in Exhibit A. The Debtor asserts that the amounts listed on Exhibit A are the only defaults under the Leases that must be cured under 11 U.S.C. § 365(b)(1)(A).

4. The Debtor also requests that the Court enter an order stating that the lease documents mailed to each landlord with a copy of this Motion, which documents are bates-stamped as follows:

Store	Bates-Stamp Numbers
877	000103-000298
893	000622-000654
909	001032-001124

constitute all of the documents for the Leases, and that each of the landlords under the Leases (i) is estopped to deny that such lease documents are true and complete copies of the lease between the Debtor and the landlord, (ii) has waived any objection that there are amendments or modifications to the lease, and (iii) has waived any objection that the Debtor is not the current tenant under the lease.

5. Under 11 U.S.C. § 365(f), the Debtor may assign unexpired leases if the leases are assumed and adequate assurance of future performance is provided by the assignee. Under 11 U.S.C. §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. 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).

6. The Debtor has exercised its business judgment and determined that the Leases should be assumed and assigned to Safeway. The Debtor asserts that assumption and assignment of the Leases is in the best interests of the Estate, because the Estate will avoid incurring any rejection damages for the Leases, the Estate will not have to pay the cure amounts for the Leases, and Safeway (in addition to paying such cure amounts) will purchase the associated equipment owned by the Debtor in the leased stores.

7. The Debtor also asserts that adequate assurance of future performance is provided by Safeway, because Safeway was the tenant under the Leases prior to the Debtor, and Safeway is financially capable of performing in accordance with the terms of the Leases.

Sale of Personal Property

8. Pursuant to 11 U.S.C. § 363(b)(1) and (f), the Debtor also seeks authority to sell to Safeway the personal property owned by the Debtor and located in stores # 877, 893, and 909 (the "Personal Property"), free and clear of any liens, claims, or encumbrances. Safeway will pay the Debtor the sum of $68,000.00 for the Personal Property, as reflected on Exhibit A. The Debtor believes the proposed purchase price for the Personal Property is the best price the Debtor can obtain for the Personal Property, and that the proposed sale is fair and reasonable and in the best interests of the estate.

WHEREFORE, the Debtor respectfully requests that the Court enter an order approving the Debtor's assumption and assignment of the Leases to Safeway as set forth above, approving the sale of the Personal Property to Safeway as set forth above, and granting the Debtor all other just and proper relief.

JACOBVITZ THUMA & WALKER
a Professional Corporation

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This certifies that a copy of the foregoing was served by first class mailed on:

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this 2d day of October, 2001.

David T. Thuma

EXHIBIT A

STORE NO.	LANDLORD	PROPOSED CURE AMOUNTS FOR LANDLORD	ASSOCIATED SUBLEASE	PROPOSED PERSONAL PROPERTY SALES PRICE
#877 2910 Juan Tabo, Albuquerque, NM	Sunway Associates Limited Partnership Five Cambridge Center, 9th Floor Cambridge, MA 02142	Past due rent: $68,158.79, plus rent for August, September, and October, 2001 Real property taxes: $37,641.90, plus 2001 real property taxes	Ground Sublease, dated June 6, 1984, between Safeway Stores, Inc. and Retail Centers Limited	$28,000.00
#893 Big Rock Shopping Center Espanola, NM	Santa Clara Pueblo P.O. Box 580 Espanola, NM 87532	Past due rent: $48,815.33, plus rent for August, September, and October, 2001 Real property taxes: $5,800, plus 2001 real property taxes	None	$15,000, if the personal property is owned by the Debtor
#909 2513 N. Main Roswell, NM	Malease 15 Safecorp P.O. Box 40 Westbury, NY 11590	Past due rent: $145,331.06, plus rent for August, September, and October, 2001 Real property taxes: $9,828, plus real property taxes	None	$25,000.00