

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

FILED
12:00 MIDNIGHT
OCT 19 2001

In re:

FURR'S SUPERMARKETS, INC.,

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

DROP BOX
United States Bankruptcy Court
Albuquerque, New Mexico

Debtor.

**MOTION FOR THIRD ORDER SUPPLEMENTING FINAL AUTHORIZING DEBTOR
TO OBTAIN SECURED FINANCING, AND FOR USE OF CASH COLLATERAL, IN
NOVEMBER, 2001, AND FOR EXPEDITED PRELIMINARY HEARING TO AVOID
IRREPARABLE HARM**

Furr's Supermarkets, Inc., debtor in possession ("Furr's"), pursuant to Bankruptcy Code §363(c)(2) and Bankruptcy Rule 4001(b) and (d), files this Motion For Third Order Supplementing Final Authorizing Debtor To Obtain Secured Financing, and For Use of Cash Collateral in November, 2001, and for Expedited Preliminary Hearing to Avoid Irreparable Harm (the "Motion"). Furr's moves the Court as follows:

A. To schedule a preliminary hearing on October 26, 2001 at 1:30 p.m. to authorize secured financing and use of cash collateral from October 28, 2001 through December 1, 2001 on the terms set forth in the First Order Supplementing Final Order (1) Authorizing Debtor To Obtain Secured Financing, (2) Granting Adequate Protection And (3) Granting Other Relief, To Permit Short-Term Financing And Use Of Cash Collateral, entered September 18, 2001 (the "First Supplemental Order"), and in the amounts set forth on the budget attached hereto as Exhibit A (the "November Budget"); and

B. To set this Motion for a final hearing on an expedited basis, pursuant to Bankruptcy Code §363(c) and Bankruptcy Rule 4001(b)(2), and to grant the relief requested herein at the final hearing.

In support of this Motion, Furr's states:

1. Creditors Holding Liens Against Cash Collateral. All cash currently held by Furr's constitutes cash collateral or claimed cash collateral under Bankruptcy Code § 363(a), securing, inter alia, (i) any unpaid balance owed to Heller Financial, Inc. ("Heller"), as agent for Fleet Capital Corporation ("Fleet"), Bank of America N.A. ("B of A"), Heller, and the Metropolitan Life Insurance Company ("MetLife") (together, the "DIP Lenders"), pursuant to the

1229

loan of up to \$33 million made by the DIP Lenders on or about February 8, 2001 (the "DIP Loan"); (ii) approximately \$49 million owed to Heller, as agent for Heller, Fleet, and B of A (together, the "Pre-Petition Senior Lenders") under a Loan Agreement dated December 21, 2000 (the "Pre-Petition Senior Indebtedness"); and (iii) a \$25 million loan made to Furr's by MetLife as described in finding D(iii) of the Final DIP Order (the "Pre-Petition ML Senior Debt") (together, the Pre-Petition Senior Indebtedness and Pre-Petition ML Senior Debt are called the "Pre-Petition Senior Loans"). The DIP Lenders, the Pre-Petition Bank Lenders, and MetLife are sometimes referred to as the "Lenders." The Pre-Petition Senior Lenders and MetLife are sometimes referred to as the "Pre-Petition Bank Lenders." The Lenders have liens against collateral constituting cash collateral within the meaning of 11 U.S.C. § 363(a). Furr's does not seek to use cash collateral, or claimed cash collateral, of other creditors, such as liquor wholesalers and Texas taxing authorities.

2. Irreparable Harm to the Estate Without Continued Use Of Cash Collateral.

During November, 2001 Furr's must use cash collateral or obtain secured financing as set forth in this paragraph to avoid immediate and irreparable harm to the estate and its creditors. Furr's needs to use cash collateral in accordance with the November Budget to continue to operate; to pay rent; to pay its current employees, whose duties will include compliance with certain statutory requirements and conducting an expanded preference screen; to preserve the value of remaining assets in Furr's estate; and to pay necessary professional fees. Without authority to use cash after October 27, 2001, Furr's would be forced to convert to Chapter 7 on or about October 28, 2001. Furr's remaining assets include, among other things, inventory prepaids (which require substantial accounting work to reconcile against deliveries), accounts receivable (which require reconciliation and compilation of supporting documents), Furr's leasehold interest in its El Paso warehouse, liquor licenses, preference claims, and various equipment, fixtures, and furnishings.

3. Treatment Under the First Supplemental Order. The Lenders are entitled

to adequate protection for the use of their cash collateral. Furr's therefore proposes that all cash collateral Furr's uses be treated for all purposes as if the cash were loaned to Furr's pursuant to

the First Supplemental Order, subject to modification of the extent of the lien against avoidance actions to secure further advances as may be proposed by the debtor.

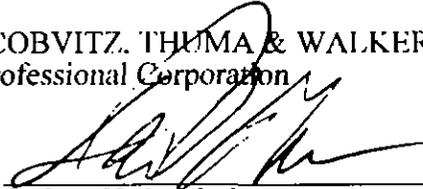
4. The Requested Relief is in the Best Interest of the Estate. The requested relief is in the best interest of the estate. It permits Furr's to manage and interface with third parties who will assist in the completion of the most important of Furr's statutory duties, and to enhance the prospect of payment of administrative expenses. It also permits Furr's to liquidate assets for the benefit of creditors for a value substantially greater than what Furr's believes a trustee could achieve. It will also facilitate a smoother transition to a chapter 7 trustee, if the case should convert to chapter 7, and will allow the Debtor and other parties to determine whether a feasible plan of liquidation can be proposed.

5. Request For an Expedited Preliminary Hearing. Furr's requests the Court to conduct, pursuant to 11 U.S.C. § 363(c), an expedited preliminary hearing on the proposed use of cash collateral for the November Period on October 26, 2001 at 1:30 p.m., and to authorize use of cash collateral as requested in this Motion pending a final hearing on the Motion. As shown above, this is necessary to avoid irreparable harm to the estate.

6. Consent of Lenders. The Lenders have not consented to this Motion or to the November Budget. Furr's is negotiating with the Lenders to obtain such consent.

WHEREFORE, Furr's respectfully requests that this Court grant the interim relief requested above, grant the additional relief requested after a final hearing on the Motion, to be held as soon as reasonably possible, and to grant Furr's all other just and proper relief.

JACOBVITZ, THUMA & WALKER,
a Professional Corporation

By: 

Robert H. Jacobvitz
David T. Thuma
500 Marquette N.W., Suite 650
Albuquerque, N.M. 87102
(505) 766-9272
(505) 766-9287 (fax)

Attorneys for Furr's Supermarkets, Inc.

POST CLOSING OPERATING BUDGET

	WK END 11/02/01 18	WK END 11/19/01 18	WK END 11/27/01 18	WK END 12/04/01 18	WK END 12/11/01 18	TOTAL
HEADCOUNT						
PAYROLL						
SALARIES	28.0	28.0	28.0	28.0	28.0	140.0
BENEFITS/TAXES	2.2	2.2	2.2	2.2	2.2	11.0
TOTAL PAYROLL	<u>30.2</u>	<u>30.2</u>	<u>30.2</u>	<u>30.2</u>	<u>30.2</u>	<u>151.0</u>
CONSULTING FEES	5.0	5.0	5.0	5.0	5.0	25.0
RENT	25.0	-	-	-	-	25.0
OPERATING COSTS						
CHAIRMAN/VICE CHAIRMAN	-	-	-	-	-	-
DATA CENTER	10.0	10.0	10.0	10.0	10.0	50.0
UTILITIES	2.0	2.0	2.0	2.0	2.0	10.0
TELEPHONE	2.2	2.2	2.2	2.2	2.2	11.0
SUPPLIES	0.3	0.3	0.3	0.3	0.3	1.5
HOUSEKEEPING	0.2	0.2	0.2	0.2	0.2	1.0
SECURITY	0.3	0.3	0.3	0.3	0.3	1.5
POSTAGE	0.3	0.3	0.3	0.3	0.3	1.5
MISC EXPENSE	4.0	4.0	4.0	4.0	4.0	20.0
TOTAL OPERATING COSTS	<u>19.3</u>	<u>19.3</u>	<u>19.3</u>	<u>19.3</u>	<u>19.3</u>	<u>96.5</u>
SUB TOTAL	<u>79.5</u>	<u>84.5</u>	<u>84.5</u>	<u>84.5</u>	<u>84.5</u>	<u>297.5</u>
CUM	<u>79.5</u>	<u>134.0</u>	<u>188.5</u>	<u>243.0</u>	<u>297.5</u>	
JTW						
US TRUSTEE FEES	-	50.0	-	-	-	50.0
DAVIS & PIERCE PC	-	-	15.0	-	-	15.0
CARRYING/CLOSURE COSTS-WHSE	48.0	10.0	10.0	10.0	-	78.0
RETENTION	-	-	-	-	84.0	84.0
SUB TOTAL	<u>48.0</u>	<u>80.0</u>	<u>25.0</u>	<u>15.0</u>	<u>84.0</u>	<u>212.0</u>
CUM	<u>48.0</u>	<u>108.0</u>	<u>133.0</u>	<u>148.0</u>	<u>212.0</u>	
GRAND TOTAL	<u>127.5</u>	<u>114.5</u>	<u>79.5</u>	<u>69.5</u>	<u>118.5</u>	<u>509.5</u>
CUM	<u>127.5</u>	<u>242.0</u>	<u>321.5</u>	<u>391.0</u>	<u>509.5</u>	