

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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UNITED STATES BANKRUPTCY COURT
ALBUQUERQUE, NM

In re:

FURR'S SUPERMARKETS, INC.

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

Debtor.

**MOTION TO APPROVE RESERVE ACCOUNT
DISBURSEMENTS TO TEXAS TAX AUTHORITIES**

The Debtor, by counsel, moves the Court to approve the disbursement, to the City of El Paso, Pecos County, Ward County, Midland County, Midland Central Appraisal District, Andrews County, Andrews County Appraisal District, Brewster County, Ector County, Pecos County, Kermit ISD, Winkler County, and Pecos-Barstow-Toyah ISD, all in Texas (together, "Texas Tax Authorities"), from the reserve account established for the Texas Tax Authorities (the "Reserve Account") pursuant to the first post-closing financing order entered by the Court (Docket No. 1102), the following amounts:

- (a) City of El Paso in the amount of \$1,194,853.23
- (b) Pecos County in the amount of \$16,505.52
- (c) Ward County in the amount \$18,703.60
- (d) Midland County in the amount of \$7,954.55
- (e) Midland Central Appraisal District in the amount of \$85,521.41
- (f) Andrews County in the amount of \$8,431.76
- (g) Andrews County Appraisal District in the amount of \$15,050.65
- (h) Brewster County in the amount of \$19,985.46

The Debtor further requests that, after disbursing the funds to the Texas Tax Authorities, as set forth above, the Debtor be authorized and directed to disburse the remainder of the \$1,532,395.50 in the reserve account to Metropolitan Life Insurance as a provisional payment pursuant to the terms of the final first post-closing financing order (Docket No. 1102).

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In support of this motion, the Debtor states:

1. The Texas Tax Authorities are each a unit of local government in the State of Texas which possess the authority under the laws of the State of Texas to assess and collect *ad valorem* taxes on real and personal property.

2. The Texas Tax Authorities each filed a pre-petition secured claim as follows:

- (a) City of El Paso in the amount of \$1,553,137.18
- (b) Pecos County in the amount of \$32,442.66
- (c) Ward County in the amount \$36,183.59
- (d) Midland County in the amount of \$8,495.19
- (e) Midland Central Appraisal District in the amount of \$91,300.24
- (f) Andrews County in the amount of \$10,160.59
- (g) Andrews County Appraisal District in the amount of \$15,225.11
- (h) Brewster County in the amount of \$59,225.63

3. These pre-petition secured claims were filed to recover actual year 2000 and estimated year 2001 real and personal *ad valorem* property taxes incurred by the Debtor in the ordinary course of business. These taxes, to the extent, were secured by first priority liens, pursuant to Texas Property Tax Code §§ 32.01 and 32.05, against inventory and other personalty of the Debtor located in the areas where each of the Texas Tax Authorities exercises jurisdiction.

4. Pursuant to the Order Approving Asset Sale to Fleming, entered July 3, 2001, the assets sold to Fleming, or its designees, were sold free and clear of all liens, including the liens of the Texas Tax Authorities. Under that Order, the Texas Tax Authorities' tax liens for personal property tax debt attached to the sale proceeds to the same extent, and in the same priority, as such liens had attached to the assets that were sold.

5. To provide adequate protection of the interests of the Texas Tax Authorities for personal property taxes, the Debtor reserved \$1,532,395.50 for the personal property claims of the Texas Tax Authorities pursuant to the first post-closing financing order entered by the Court.

6. The tax claims are over-secured; and thus the Texas Tax Authorities claim they

are entitled to post-petition interest pursuant to 11 U.S.C. 506(b). Texas statutes provide the rate of interest on *ad valorem* taxes is twelve percent (12%) per annum.

7. The estate will benefit from the immediate payment of the *ad valorem* personal property tax claims of the Texas Tax Authorities in that so long as such tax claims remain unpaid, the estate's interest in the sales proceeds continues to be reduced by the accrual of post-petition interest. Further, so long as the *ad valorem* personal property tax claims of the Texas Tax Authorities remain unpaid, the Debtor may not distribute any proceeds in the Reserve Account relating to the claims of the Texas Tax Authorities, as such Reserve Account is necessary to provide the Texas Tax Authorities with adequate protection with respect to their respective interests in cash collateral.

8. The Debtor has examined the *ad valorem* personal property tax claims of the Texas Tax Authorities, and has determined that such claims are valid in the amounts the Debtor requests authority to pay.

9. The Texas Tax Authorities have agreed to waive all claims with respect to the personal property tax debt, including claims to post-petition interest, provided the allowed claim amounts for the personal property tax debt are paid by November 30, 2001.

10. The payment to the appropriate Texas Tax Authority, as requested by this Motion, would be in final and full satisfaction of the years 2000 and 2001 personal property taxes owed by the Debtor and/or its estate to the Texas Tax Authorities for those years; and such amounts identified at the beginning of this Motion would be allowed pre-petition secured claims of the Texas Tax Authorities for personal property taxes. The Texas Tax Authorities would have no other allowed claims against the estate for personal property taxes.

11. The payments requested by this Motion would satisfy all personal property tax

claims of the Texas Tax Authorities against the Debtor and/or its estate for all years 2000 and 2001 asserted by the Texas Tax Authorities against the Debtor. The rights of the Texas Tax Authorities relating to those year 2001 taxes assumed by parties, other than the Debtor, as provided in previous orders of the Court, would not be affected.

12. The Debtor requests entry of an order, in substantially the form attached hereto as Exhibit A, granting the relief requested by this Motion. The Debtor, Texas Tax Authorities, Metropolitan Life Insurance Company and Heller Financial, Inc., as agent, have approved such order.

WHEREFORE, the Debtor requests entry of an order, in substantially the form attached hereto as Exhibit A, granting the relief requested by this Motion, and such other relief as is appropriate.

JACOBVITZ, THUMA & WALKER, P.C.

By: 

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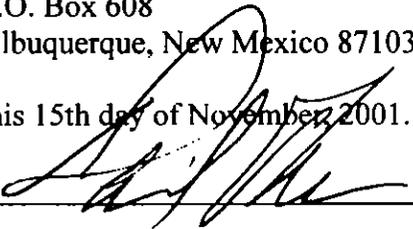
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this 15th day of November 2001.



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.

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

Debtor.

**ORDER APPROVING RESERVE ACCOUNT
DISBURSEMENTS TO TEXAS TAX AUTHORITIES**

This matter came before the Court on the Debtor's Motion to Approve Reserve Account Disbursements To Texas Tax Authorities filed November 14, 2001 (the "Motion"). The (i) Debtor, and (ii) City of El Paso, Pecos County, Ward County, Midland County, Midland Central Appraisal District, Andrews County, Andrews County Appraisal District, Brewster County, Ector County, Pecos County, Kermit ISD, Winkler County, and Pecos-Barstow-Toyah ISD, all in Texas (together, the "Texas Tax Authorities") have approved this order and have stipulated and agreed, subject to entry of this order, as follows:

A. The Texas Tax Authorities are each a unit of local government in the State of Texas which possess the authority under the laws of the State of Texas to assess and collect *ad valorem* taxes on real and personal property.

B. The Texas Tax Authorities each filed a pre-petition secured claim as follows:

- (a) City of El Paso in the amount of \$1,553,137.18
- (b) Pecos County in the amount of \$32,442.66
- (c) Ward County in the amount \$36,183.59
- (d) Midland County in the amount of \$8,495.19
- (e) Midland Central Appraisal District in the amount of \$91,300.24
- (f) Andrews County in the amount of \$10,160.59
- (g) Andrews County Appraisal District in the amount of \$15,225.11

EXHIBIT
A

(h) Brewster County in the amount of \$59,225.63

C. These pre-petition secured claims were filed to recover actual year 2000 and estimated year 2001 real and personal *ad valorem* property taxes incurred by the Debtor in the ordinary course of business. These taxes, to the extent allowed by this order, were secured by first priority liens, pursuant to Texas Property Tax Code §§ 32.01 and 32.05, against inventory and other personalty of the Debtor located in the areas where each of the Texas Tax Authorities exercises jurisdiction.

D. Pursuant to the Order Approving Asset Sale to Fleming, entered July 3, 2001, the assets sold to Fleming, or its designees, were sold free and clear of all liens, including the liens of the Texas Tax Authorities. Under that Order, the Texas Tax Authorities' tax liens for personal property tax debt attached to the sale proceeds to the same extent, and in the same priority, as such liens had attached to the assets that were sold.

E. To provide adequate protection of the interests of the Texas Tax Authorities for personal property taxes, the Debtor reserved \$1,532,395.50 for the personal property claims of the Texas Tax Authorities (the "Reserve Account") pursuant to the first post-closing financing order entered by the Court.

F. The tax claims are over-secured; and thus the Texas Tax Authorities claim they are entitled to post-petition interest pursuant to 11 U.S.C. 506(b). Texas statutes provide the rate of interest on *ad valorem* taxes is twelve percent (12%) per annum.

G. The estate will benefit from the immediate payment of the *ad valorem* personal property tax claims of the Texas Tax Authorities in that so long as such tax claims remain unpaid, the estate's interest in the sales proceeds continues to be reduced by the

accrual of post-petition interest. Further, so long as the *ad valorem* personal property tax claims of the Texas Tax Authorities remain unpaid, the Debtor may not distribute any proceeds in the Reserve Account relating to the claims of the Texas Tax Authorities, as such Reserve Account is necessary to provide the Texas Tax Authorities with adequate protection with respect to their respective interests in cash collateral.

H. The Debtor has examined the *ad valorem* personal property tax claims of the Texas Tax Authorities, and has determined that such claims are valid in the amounts set forth in paragraph I below.

I. The Texas Tax Authorities have agreed to waive all claims with respect to the personal property tax debt, including claims to post-petition interest, provided the allowed claim amounts for the personal property tax debt are paid as provided in this order.

The Court FINDS:

AA. On November 13, 2001, the Court entered an order shortening the period to object to the Motion to eight (8) days.

BB. On November 13, 2001, the Debtor gave notice (the "Notice") of the Motion to all persons on the limited mailing matrix maintained for this chapter 11 case, as shown by the Notice filed October 10, 2001, which contains a proof of service.

CC. The Notice specified a deadline of eight days, plus three days based on service of the Notice by mail, for a total of eleven days, in which to file objections to the Motion.

DD. The Notice was sufficient and appropriate in the particular circumstances.

EE. The objection deadline expired on November 26, 2001. [No objections to the Motion were filed/the only objections to the Motion were filed by

_____]. This order resolves those objections].

FF. No further notice of the Motion or of this order is necessary in the particular circumstances, prior to entry of this order.

GG. The Court has jurisdiction with respect to this Motion and to grant the relief set forth below 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.

HH. The *ad valorem* personal property tax claims of the Texas Tax Authorities should be allowed in the amounts specified in paragraph 1, below.

II. No further notice is necessary under the circumstances prior to entry of this order.

JJ. The relief granted by this order is appropriate.

IT IS HEREBY ORDERED:

1. Within three (3) business days after entry of this Order, the Debtor shall pay and disburse to the Texas Tax Authorities from the Reserve Account the following amounts:

- (a) City of El Paso in the amount of \$1,194,853.23
- (b) Pecos County in the amount of \$16,505.52
- (c) Ward County in the amount \$18,703.60
- (d) Midland County in the amount of \$7,954.55
- (e) Midland Central Appraisal District in the amount of \$85,521.41
- (f) Andrews County in the amount of \$8,431.76
- (g) Andrews County Appraisal District in the amount of \$15,050.65
- (h) Brewster County in the amount of \$19,985.46

2. The payment to the appropriate Texas Tax Authority stated in paragraph 1 shall be in final and full satisfaction of the years 2000 and 2001 personal property taxes owed by the Debtor and/or its estate to the Texas Tax Authorities for those years; and such

amounts identified in paragraph 1 are hereby allowed pre-petition secured claims of the Texas Tax Authorities for personal property taxes. The Texas Tax Authorities not identified in paragraph 1 shall have no allowed claim against the estate for personal property taxes.

3. The payments in paragraph 1 shall satisfy all personal property tax claims of the Texas Tax Authorities against the Debtor and/or its estate for all years 2000 and 2001 asserted by the Texas Tax Authorities against the Debtor. Nothing contained herein shall affect the rights of the Texas Tax Authorities relating to those year 2001 taxes assumed by parties, other than the Debtor, as provided in previous orders of the Court.

4. The Stipulation set forth above contains the complete agreement of the parties with respect to the claims of the Texas Tax Authorities arising from personal property taxes for years 2000 and 2001 owed by the Debtor and/or its estate, and supersedes any prior agreements on the matter, whether written or oral. Such Stipulation cannot be amended, modified, or waived except by a writing signed by the parties. In addition, no other or further claims of the Texas Tax Authorities relating to any personal property tax debt pertaining in any way to the Debtor and/or its estate shall be asserted by any of the Texas Tax Authorities, and all such claims are waived and released only as to such parties.

5. Nothing contained herein shall affect the respective rights and liabilities of the Debtor and the Texas Tax Authorities with respect to the real property *ad valorem* taxes. Furthermore, any tax claim of any of the Texas Tax Authorities against the Debtors for real property taxes will be satisfied from the sale of such property.

6. This Order may be executed in several counterparts, each of which, when so

executed, shall be deemed an original, but all of which together shall constitute one and the same instrument, and facsimile signatures transmitted to the other party shall be binding.

7. After disbursing the funds to the Texas Tax Authorities, as set forth above, the Debtor is authorized and directed to disburse the remainder of the \$1,532,395.50 in the Reserve Account to Metropolitan Life Insurance as a provisional payment pursuant to the terms of the final first post-closing financing order (Docket No. 1102).

THE HONORABLE JAMES S. STARZYNSKI
UNITED STATES BANKRUPTCY JUDGE

Submitted, stipulated to and approved by:

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