

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

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In re:

FURR'S SUPERMARKETS, INC.,  
Debtor.

U.S. BANKRUPTCY COURT  
ALBUQUERQUE, NM  
Case No. 11-01-10779-SA  
Chapter 11

**MOTION TO EXTEND TIME WITHIN WHICH THE DEBTOR MAY ASSUME OR  
REJECT THE EL PASO DISTRIBUTION CENTER LEASE**

Furr's Supermarkets, Inc. (the "Debtor") submits this motion for an order under 11 U.S.C. § 365(d)(4) extending the time within which the Debtor must move to assume or reject its unexpired lease of the product distribution center located at 9820 Railroad Drive and 9601 Railroad Drive in El Paso, Texas (the "Distribution Center").

1. On February 8, 2001 the Debtor filed a voluntary petition in this Court for relief under chapter 11 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. On April 6, 2001, June 9, 2001, and August 6, 2001, the Court entered orders extending through December 21, 2001 the time within which the Debtor may assume or reject unexpired leases of nonresidential real property.

3. The Debtor seeks an order under Bankruptcy Code § 365(d)(4) extending until February 28, 2002 the time within which it must move to assume or reject the unexpired lease of the Distribution Center (the "Distribution Center Lease").

4. There is now pending before the Court a contested matter to determine whether the Debtor or Pinnacle Logistics, Inc. has the benefit of any value of the Distribution Center Lease. The requested extension would give the Debtor time after the Court rules on that

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issue to either reject the Distribution Center Lease or market the property and assume the Distribution Center Lease once a buyer is found.

5. Bankruptcy Code § 365(d)(4) provides that if the trustee (or debtor in possession) does not assume an unexpired lease within 60 days of the case's commencement, the lease is deemed rejected. That section also provides, however, that the Court may extend the 60-day period for "cause."

6. Although there is no Tenth Circuit authority directly on point, the Second, Fifth, and Ninth Circuits have acknowledged that in large cases, courts routinely extend § 365(d)(4)'s 60-day period for deciding whether to assume or reject. See, e.g., Legacy, Ltd. v. Channel Home Centers (In re Channel Home Centers), 989 F.2d 682, 688-89 (3d Cir. 1993) (affirming second § 365(d)(4) extension to allow debtor to evaluate unexpired leases); In re American Healthcare Management, 900 F.2d 827, 830 (5th Cir. 1990) (affirming third extension); In re Victoria Station, Inc., 875 F.2d 1380, 1384-85 (9th Cir. 1989) (affirming second extension). In determining whether "cause" exists for an extension, courts have relied on several factors, including the following:

- (a) whether the case is complex and involves a large number of leases;
- (b) whether the leases are primary among the debtor's assets; and
- (c) whether lessors continue to receive postpetition rental payments.

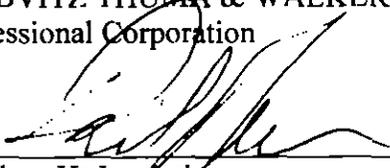
See South St. Seaport L.P. v. In re Burger Boys, Inc. (In re Burger Boys, Inc.), 94 F.3d 755, 761 (2d Cir. 1996); see also Channel Home Centers, 989 F.2d at 689 ("[I]t is permissible for a bankruptcy court to consider a particular debtor's need for more time in order to analyze leases in light of the plan it is formulating.").

7. All three factors are present here. This is a relatively large and complex case. The El Paso Distribution Center Lease is one of the most valuable remaining assets in the estate. The Debtor is and expects to remain current on post-petition rent obligations under the Distribution Center Lease.

8. The relief requested herein will not prejudice the landlord. 11 U.S.C. §365(d)(3) gives landlords a preferred position. Under that section, a debtor-in-possession is obligated to pay the reserved rent for all postpetition periods before rejection. Towers v. Chickering & Gregory (In re Pacific-Atlantic Trading Co.), 27 F.3d 401 (9th Cir. 1994). Indeed, §365(d)(3) grants the landlord's postpetition claims under the lease "automatic" administrative expense status, without the requirement of notice and a hearing. In re Wingspread Corp., 116 B.R. 915, 926 (Bankr. S.D.N.Y. 1990). Given these protections, the potential for prejudice to the landlord by an extension of the Debtor's time to assume or reject the Distribution Center Lease is not significant relative to burden to the estate from a premature assumption/rejection decision.

WHEREFORE, the Debtor respectfully requests that this Court enter an order extending the time within which the Debtor must move to assume or reject the Distribution Center Lease through February 28, 2002, and for all other just and proper relief.

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