

IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: : Chapter 11
FURRS SUPERMARKETS, INC., : Case No. 01-11-10779-SA
Debtor. :

**AMENDED MOTION OF PINNACLE LOGISTICS, INC. AND
COUNTRYWIDE LOGISTICS, INC. TO COMPEL DEBTOR
TO (1) ASSUME OR REJECT CERTAIN EXECUTORY CONTRACTS AND/
OR ALTERNATIVELY (2) REQUIRING THE DEBTOR
TO TENDER WEEKLY PAYMENTS ON A CASH DEMAND BASIS**

Pinnacle Logistics, Inc. ("Pinnacle") and its affiliate Countrywide Logistics, Inc. ("Countrywide"), through their attorneys, hereby submit their Motion to Compel the Debtor to (1) Immediately Assume or Reject Pursuant to 11 U.S.C. §365 the Warehousing Agreement and the Transportation Agreement (as hereinafter defined) and/or alternatively (2) Requiring the Debtor Pursuant to Bankruptcy Code sections 363 and 105 to provide Pinnacle and Countrywide with adequate protection pending assumption or rejection of the Warehousing Agreement and the Transportation Agreement in the form of weekly cash payments and such other protections directed by the Court (the "Motion"). In support thereof, Pinnacle and Countrywide respectfully represent and show as follows:

464

Preliminary Statement

Pinnacle and Countrywide, pursuant to the terms of certain executory contracts described below and the terms of the Replacement Lien Order (as hereinafter defined), continue to provide post-petition warehousing and transportation services, respectively, to the Debtor. As parties to such executory contracts, and as required by the Replacement Lien Order, Pinnacle and Countrywide have no choice but to continue to render services and incur significant obligations to third parties notwithstanding the Debtor's ability to satisfy its post-petition obligations thereunder. For the reasons noted below, Pinnacle and Countrywide request that the Debtor be compelled to immediately assume or reject the Warehousing Agreement and the Transportation Agreement which govern the respective relationships between the parties. Alternatively, Pinnacle and Countrywide request that pending such determination, the Debtor be compelled to provide weekly cash deposits to Pinnacle and Countrywide as adequate protection, rather than the current monthly cash deposit.

Facts

1. Furr's Supermarket, Inc. ("Furr's" or the "Debtor") is a regional supermarket chain with operations in New Mexico and Western Texas. On or about February 8, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") with this Court.

2. Pinnacle operates warehouse and distribution centers and provides related operational services to its clients. On or about September 23, 1998, Pinnacle and Furr's entered into a Warehousing and Distribution Agreement (the "Warehousing Agreement")

whereby Furr's agreed to retain Pinnacle to provide Furr's with certain warehousing and related services at a warehouse facility located in El Paso, Texas (the "El Paso Warehouse"). A copy of the Warehousing Agreement is annexed hereto as Exhibit A.

3. Countrywide is a common carrier and trucking firm providing transportation of goods and related services to its clients. On or about March 26, 1999, Countrywide and Furr's entered into a Transportation Services Agreement (the "Transportation Agreement") whereby Furr's agreed to retain Countrywide to provide Furr's with certain transportation and related services. A copy of the Transportation Agreement is attached hereto as Exhibit B.

4. Pinnacle and Countrywide are among the Debtor's largest secured and unsecured creditors. As of the Petition Date, Pinnacle was owed approximately \$2.1 million by the Debtor which represents unpaid expenses and charges incurred by the Debtor for warehousing and related services during the ten (10) week period prior to the Petition Date.

5. As of the Petition Date, Countrywide was owed approximately \$2.4 million by the Debtor which represents unpaid expenses and charges incurred by the Debtor for transportation and related services during the ten (10) week period prior to the Petition Date.

6. As of the Petition Date, the Debtor had inventory valued at approximately \$9.0 million stored in the El Paso Warehouse. Pinnacle, as warehouseman for the El Paso Warehouse, asserts a first priority Warehouseman's Lien pursuant to Texas Business and Commerce Code Section 7.209 against such inventory for all unpaid pre-petition and

post-petition amounts due from the Debtor for warehousing and related services arising from the Warehousing Agreement.¹

7. As of the Petition Date, the Debtor had inventory valued at approximately \$700,000 in containers being transported by Countrywide to various stores owned and/or operated by the Debtor. Countrywide, as carrier of Furr's inventory, asserts a first priority Carrier's Lien pursuant to Section 7-307 of the Uniform Commercial Code, as adopted by Texas in Tex. Bus. & Comm. Code. Ann. §7.307 and as adopted by New Mexico in NM Stat. Ann. §55-7-307, for all unpaid pre-petition amounts due from the Debtor for transportation and related services arising from the Transportation Agreement.² Accordingly, Countrywide possesses a first priority Carrier's Lien, up to the amount of the value of the inventory being transported on the Petition Date, for the pre-

Section 7.209 of the Texas Business and Commerce Code provides in relevant part that:

A warehouseman has a lien against the bailor on the goods covered by a warehouse receipt or on the proceeds thereof in his possession for charges for storage or transportation (including demurrage and terminal charges), insurance, labor, or charges present or future in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law.

Tex. Bus. & Com. Code Ann. §7.209(a)(1) (Vernon 1999). Section 7.209 further provides that "[T]he warehouseman's specific lien for charges and expenses under Subsection (a)(1) is effective against any security interest." Tex. Bus. & Com. Code Ann. §7.209(c)(emphasis supplied).

² Section 7-307 of the Uniform Commercial Code provides in relevant part that

A carrier has a lien on goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law.

U.C.C. §7-307(1). A Carrier's Lien confers upon a carrier a specific lien similar conferred to that of a warehouseman's lien. See 7A Anderson, Uniform Commercial Code, §7-307:3 through §7-307:4 at p. 704 (3d ed. 1995).

petition amounts due from the Debtor for transportation and related services arising under the Transportation Agreement, as well as a post-petition Carrier Lien.

8. On or about February 23, 2001, shortly after these proceedings were commenced, Pinnacle, Countrywide, the Debtor and Heller Financial, Inc., as agent for Furr's prepetition senior lenders (the "Prepetition Senior Lenders") and for a group of lenders that have made certain loans and advances to Furr's as a debtor-in-possession (the "DIP Lenders"), agreed to and submitted an Order that, among other things, granted Pinnacle and Countrywide first priority replacement Warehouseman's and Carrier's liens, respectively, to the extent that such pre-petition liens are valid, on the Debtor's post-petition inventory for all charges and expenses due and owing by the Debtor pre-petition, and to the extent valid, continued their post-petition liens as well (the "Replacement Lien Order"). This Court signed and entered the Replacement Lien Order on March 2, 2001, effective as of February 9, 2001. The Prepetition Senior Lenders and DIP Lenders assert that their liens are senior to some or all of Pinnacle and Countrywide's pre and post-petition liens. If they are correct, Pinnacle and Countrywide only may have, in whole or part, unsecured and/or administrative claims.

9. In addition to granting Pinnacle and Countrywide certain replacement liens in respect of their pre-petition statutory lien claims, the Replacement Lien Order further provides as follows:

Further Relief. Except as otherwise provided by the contracts, and as provided that neither Furr's nor Pinnacle or Countrywide (as the case may be) is in default of any post-petition obligation under their respective contracts, Furr's, Pinnacle

and Countrywide must continue to perform their respective obligations under the contracts, unless otherwise ordered by the Court.

10. Subsequent to entry of the Replacement Lien Order, on or about March 15, 2001, the Court entered the Final Order (1) Authorizing Debtor To Obtain Secured Financing (2) Granting Adequate Protection and (3) Granting Other Relief (the "Final DIP Order"). Pursuant to the terms of the Final DIP Order, the DIP Lenders made available to the Debtor a \$33 million revolving credit facility pursuant to which the Debtor could borrow funds to pay for inventory and other day to day operating costs (the "DIP Credit Facility"). It is not clear how much, if any, of that facility remains undrawn or available to the Debtor.

11. Pursuant to the Replacement Lien Order and the contracts, Pinnacle and Countrywide have continued to perform and render services to the Debtor post-petition under the terms of the Warehousing Agreement and the Transportation Agreement.

12. Under the terms of the Warehousing Agreement and the Transportation Agreement, the Debtor is required to tender monthly payments to Pinnacle and Countrywide for services provided under the respective agreements. In general, Pinnacle and Countrywide invoice the Debtor ten days prior to the beginning of each monthly "accounting period" based on a mutually agreed budget. Thereafter, the Debtor is required to tender payment of the invoiced amount no later than the 15th day of such accounting period. At the end of the accounting period, the parties reconcile, or "true-up", amounts due for the actual expenditures of Pinnacle and Countrywide. The net

effect of this is that for any given accounting period the Debtor is ahead for two weeks and Pinnacle and Countrywide are ahead for two. The average monthly charges under the Warehousing Agreement are approximately \$1,050,000 and under the Transportation Agreement are \$650,000. Thus, for two weeks each period Pinnacle and Countrywide are owed approximately \$1,700,000.

Relief Requested

13. Pinnacle and Countrywide are concerned with the Debtor's ability to continue to pay its post-petition obligations incurred under the Warehousing Agreement and the Transportation Agreement and assert that the current circumstances justify requiring the Debtor to immediately assume or reject the Warehousing Agreement and the Transportation Agreement and provide Pinnacle and Countrywide with adequate assurance of future performance of all of the Debtor's obligations. Alternatively, pending such a determination, the Debtor must insure that all post-petition obligations be paid in full by providing (a) either weekly payments on Wednesday of each week rather than monthly payments, so that the maximum exposure (or advance) is reduced to a period of several days, rather than weeks, or (b) a binding commitment to fund from the DIP Lenders and, if necessary, the Prepetition Senior Lenders

14. The Debtor should advise the Court and all parties in interest as to its availability, if any, under the DIP Credit Facility. Moreover, the Debtor should advise the court and all parties in interest as to whether it has achieved the financial targets contained in its post-petition business plan and whether it is making or losing money.

Pinnacle and Countrywide should not be forced to incur post-petition claims if the Debtor is not administratively solvent.

15. The Debtor has publicly announced its intention to try to sell its business. It is not clear what the value of the business is, but that may depend on whether it is sold as an asset sale or going concern sale. If the value of the business is less than the amount of the secured debt, then the estate may be administratively insolvent. There is no carve out for administrative expenses (other than for certain professionals), so creditors continuing to provide goods or services on credit are at risk.

16. Moreover, Pinnacle and Countrywide have been contacted by third parties interested in acquiring the Debtor's inventory and entering into wholesale supply agreements with the Debtor. To the extent that involves the early termination of either the Warehousing Agreement or Transportation Agreement, the estate faces potentially large additional claims. In that regard, we note that the inventory level at the warehouse, although initially increasing since the filing, has over the past few weeks been steadily declining so that it is currently less than the amount that existed on the Petition Date. In order to render performance under the Warehousing and Transportation Agreements, Pinnacle and Countrywide are required to employ over 260 people (including 161 union personnel) dedicated to servicing Furr's, and has significant obligations to third parties relating to dedicated warehouse and transportation equipment. In addition, the value of goods being transported by Countrywide on the Petition Date only totaled approximately \$700,000. Presently, Pinnacle and Countrywide estimate that their aggregate damages, resulting from pre and post-petition amounts owed for services provided plus damages

resulting from any early termination of the Warehousing and Transportation Agreement, will result in a total pre and post-petition claim against the estate of approximately \$16 million. Therefore, even if Pinnacle's Warehouseman's lien and Countrywide's Carrier's lien are valid and of first priority as they believe them to be, the liens will not be sufficient to cover the full amount of Pinnacle and Countrywide's exposure.

17. In any event, notwithstanding the statutory liens asserted by Countrywide and Pinnacle, the DIP Lenders and Prepetition Senior Lenders continue to assert liens senior to the Warehouseman's and Carrier's liens asserted by Countrywide and Pinnacle, and have refused to provide a carve out for Pinnacle and Countrywide, or any other trade creditor. Pinnacle and Countrywide have attempted to resolve its issues relating to adequate protection with representatives of the Debtor and the DIP Lenders but, to date, no resolution has been achieved.³

18. As a consequence of the foregoing, to the extent Pinnacle's and Countrywide's statutory liens are adjudicated to be senior to that of the pre-petition lenders, the depletion of inventory and/or rejection of the Warehousing Agreement and Transportation Agreement could give rise to significant claims for which there may be insufficient protection, particularly if the post-petition amounts for services rendered increase in an unprotected manner. Moreover, in the event that Pinnacle's and Countrywide's Warehouseman's and Carrier's liens are subsequently adjudicated to be

³ Simultaneously with the filing of this Amended motion, Pinnacle and Countrywide have entered into an agreement with the Debtor and the DIP Lenders to modify and expand the Replacement Lien Order and the liens granted thereunder. In the event that the modified Replacement Lien Order is entered and approved by the Court, the only issues remaining with regard to adequate protection will arise only in the event that Pinnacle and Countrywide's liens are determined to be invalid or subordinate to the liens of the DIP and Pre-Petition Lenders.

subordinate to the liens of the pre-petition or DIP lenders. any recovery by Pinnacle and Countrywide is at substantial risk.

19. Bankruptcy Code section 365 does not specify a time by which an executory contract such as the Warehousing Agreement and Transportation Agreement must be assumed or rejected by a debtor. However, Bankruptcy Rule 6006 permits the Court, upon request of the other party to the contracts, to compel the Debtor to determine whether to assume or reject the Warehousing Agreement and Transportation Agreement.

20. Based on the foregoing, including the facts and circumstances that will be more fully set forth at the hearing on this motion, Pinnacle and Countrywide assert that the Court should compel the Debtor to immediately assume or reject both the Warehousing Agreement and the Transportation Agreement.

21. Alternatively, pending the assumption or rejection of the Warehousing Agreement and the Transportation Agreement, the Debtor should be required under Bankruptcy Code section 363(e) to provide to Pinnacle and Countrywide reasonable adequate protection for post-petition services being rendered.

22. Sections 362 and 363 of the Bankruptcy Code prevent the debtor's use of property that serves as collateral for a secured creditor's claim absent the debtor providing adequate protection to the secured creditor. 11 U.S.C. §§ 362, 363. Section 363(e) provides that:

on request of an entity that has an interest in property used, sold or leased, or proposed to be used, sold or leased, by the [debtor-in-possession], the court, with or without a hearing shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest.

11 U.S.C. § 363(c). The concept of adequate protection is derived from the Fifth Amendment's protection of property interests. See In re Gallegos Research Group, Corp., 193 B.R. 577, 584 (Bankr. D. Colo. 1995)(citing Wright v. Union Central Life Ins. Co., 311 U.S. 273, 61 S.Ct. 196, 85 L.Ed. 184 (1940); Louisville Joint Stock Land Bank v. Radford, 295 U.S. 555, 55 S. Ct. 854, 79 L.Ed. 1593 (1935)).

23. While the Bankruptcy Code does not define adequate protection, bankruptcy courts rely on the Supreme Court determination that adequate protection means that "the value of [a] creditor's interest in the collateral must be protected from diminution while the property is being used or retained in the bankruptcy case." In re Gallegos Research Group, 193 B.R. at 584 (citing United Sav. Ass'n. of Tex. v. Timbers of Inwood Forest Assoc., Ltd., 484 U.S. 365, 108 S. Ct. 626, 98 L.Ed.2d 740 (1988)). There is a presumption in favor of the creditor to give adequate protection if the value of the creditor's collateral decreases. F.D.I.C. v. Mathis, 64 B.R. 279, (N.D. Tex., 1986). Where adequate protection is warranted, "the Bankruptcy Court's duty to provide it is mandatory." Id. (citing 2 Collier on Bankruptcy, §361, at 361-5; Gallegos, 193 B.R. at 584 (creditors are entitled to adequate protection of their secured claims during a bankruptcy case). see also 3 Collier on Bankruptcy, ¶363.05[2] (15th ed. rev.)(if adequate protection cannot be offered, such use sale or lease of collateral under section 363(c) must be prohibited).

24. As set forth above, Pinnacle and Countrywide are concerned that the Debtor does not possess adequate cash resources to continue to make its monthly payments under the Warehousing Agreement and Transportation Agreement. Additionally, Pinnacle and Countrywide believe that they will likely be unprotected as the inventory levels that serves as their collateral to secure their statutory liens continues to steadily decrease. Inventory values in the El Paso Warehouse have dropped \$6 million, or approximately 33%, since April 6, 2000. Accordingly, the Movants assert that they are entitled to adequate protection of payment and/or against the further diminution in the value of the Collateral as a result of the Debtor's inadequate cash resources and/or the likelihood of insufficient collateral to secure their statutory liens.

25. While the Movants would prefer that the Debtor be directed to tender weekly payments under the Warehousing Agreement and the Transportation Agreement, this Court can fashion other means of adequate protection that will provide the Movants with the assurance of the Debtor's performance they require. Additional adequate protection can include, but is not limited to, a funding commitment from the DIP Lenders, the posting of a letter of credit by the Debtor in favor of Pinnacle and Countrywide or a replacement lien on the other assets of the Debtor. While the form of adequate protection may be open for discussion, what is clear however, is that the Debtor must be required to provide Pinnacle and Countrywide with some form of adequate protection due to the diminution of the value of their collateral, and/or their continuing obligation to perform services under the Warehousing Agreement and Transportation Agreement.

CONCLUSION

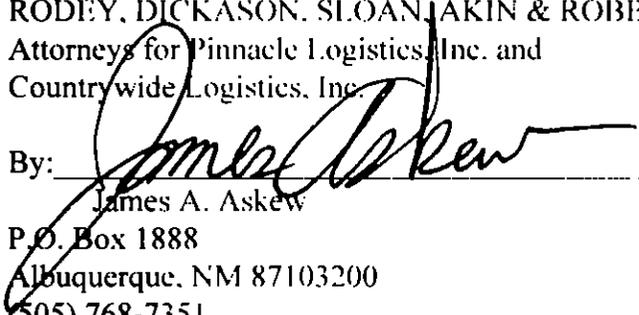
WHEREFORE, Pinnacle and Countrywide respectfully request that this Court enter an Order directing the Debtor to assume or reject the Warehousing Agreement and the Transportation Agreement with seven (7) days of entry of the date hereof, and/or to require the Debtor to provide Pinnacle and Countrywide adequate protection of its interest in the respective contracts by making weekly cash advances each Wednesday, or such other form of adequate protection as this Court determines, and to grant Pinnacle and Countrywide such other relief as this Court deems fair and proper.

Dated: May 16, 2001

Respectfully submitted,

RODEY, DICKASON, SLOAN, JAKIN & ROBB
Attorneys for Pinnacle Logistics, Inc. and
Countrywide Logistics, Inc.

By: _____


James A. Askew
P. O. Box 1888
Albuquerque, NM 87103200
(505) 768-7351

-and-

PRYOR CASHMAN SHERMAN & FLYNN LLP
Peter D. Wolfson
Richard G. Downing II
410 Park Avenue
New York, New York 10022
(212) 421-4100

CERTIFICATE OF SERVICE:

I hereby certify that I mailed a true and correct copy of the foregoing pleading, by U.S. Mail, first class, postage prepaid, on this 16th day of May, 2001 to the following:

David T. Thuma, Esq.
Robert H. Jacobvitz, Esq.
Attorney for Debtor
500 Marquette NW #650
Albuquerque, NM 87102

Richard Levin, Esq.
Attorney for Debtor
300 South Grand Avenue
Los Angeles, CA 90071-3144

Laura M. Franze, Esq.
Attorney for Debtor
1700 Pacific Avenue, Suite 4100
Dallas, TX 75202

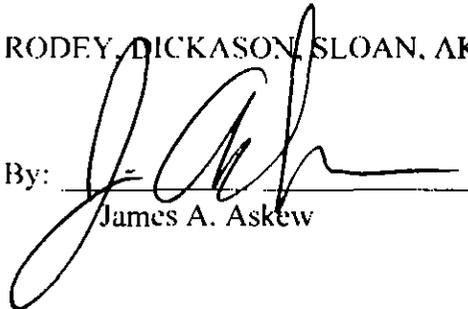
Paul M. Fish
Post Office Box 2168
Albuquerque, NM 87103-2168

William F. Davis
Davis & Pierce, P.C.
Post Office Box 6
Albuquerque, NM 87103

Office of the United States Trustee
Post Office Box 608
Albuquerque, New Mexico 87103

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By: _____



James A. Askew

WAREHOUSING AND DISTRIBUTION AGREEMENT

THIS AGREEMENT is effective as of as of September 23, 1998.

BETWEEN:

Furr's Supermarkets Inc.
1730 Montano Road
Albuquerque, New Mexico 87107

Pinnacle Logistics Inc.
1031 Highway 22 Suite 301
Bridgewater, NJ 08807

- and -

Telephone No.: (505) 344-6525
Telecopier No.: (505) 344-0810
Attention: Walter R. Doyle
("Furr's")

Telephone No.: (908) 203-1961
Telecopier No.: (908) 203-1962
Attention: Robert Dunn
("Pinnacle").

WHEREAS:

A. Pinnacle operates warehouse and distribution centers and provides related operational services to its clients;

B. Furr's has agreed to retain Pinnacle to provide Furr's with certain warehousing and related services on the terms and conditions set out in this Agreement;

NOW THEREFORE the parties agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 **Definitions** - In this Agreement, unless inconsistent with the context, the terms listed in Schedule A shall have the respective meanings set forth opposite those terms in Schedule A.

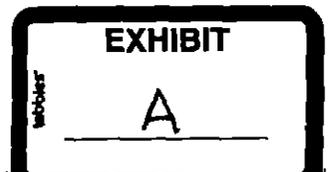
1.2 **Headings** - The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless inconsistent with the context, references in this Agreement to Articles and Sections are to Articles and Sections of this Agreement.

1.3 **Extended Meanings** - In this Agreement words importing the singular number only include the plural and vice versa, words importing the masculine gender include the feminine and neuter genders and vice versa and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

1.4 **Accounting Principles** - Wherever in this Agreement reference is made to a calculation to be made in accordance with generally accepted accounting principles consistently applied, such reference shall be to the generally accepted accounting principles from time to time recommended by the Financial Accounting Standards Board (FASB), or any successor, applicable as at the date on which such calculation is made or required to be made.

1.5 **Currency** - All references to dollar amounts in this Agreement are to lawful money of the United States of America.

1.6 **Proper Law of Contract** - This Agreement shall be governed by the laws of the State of New Mexico and the laws of the United States of America applicable in such State.



1.7 **Schedules** - The following are the Schedules annexed to this Agreement and incorporated by reference and deemed to be part of this Agreement:

Schedule A	-	Certain Definitions
Schedule B	-	Existing Assets
Schedule C	-	(Intentionally Omitted)
Schedule D	-	Budgets and Remuneration
Schedule E-1	-	Start-up Budget
Schedule E-2	-	Initial Approved Budget
Schedule F	-	Initial Reporting Calendar
Schedule G	-	Management Fees
Schedule H	-	Limitations on Liability
Schedule I	-	Sublease Agreement [to be agreed upon prior to the Commencement Date]

ARTICLE 2 SERVICES TO BE PROVIDED

2.1 **Warehouse Services** - Starting on the Commencement Date and continuing until this Agreement is terminated or expires, Pinnacle will provide to Furr's, using reasonable skills and exercising reasonable care and diligence, comprehensive, managed warehouse and related services, (the "Warehouse Services") on the terms and conditions set forth in this Agreement, consisting of the following (together referred to as the "Warehouse Specifications"):

(a) **Receipt of Products.** Receive Products at the Premises and unload them from the shipping trucks:

(b) **Storage of Products.** Once unloaded, transport the Products within the Premises to their proper storage places. With respect to date sensitive Products, Pinnacle shall use commercially reasonable efforts to insure that all such Products are routinely rotated and shipped sufficiently before their expiration date:

(c) **Store Order Assembly.** Upon receipt of a store delivery order, Pinnacle shall transport the Products to a Premises loading dock and assemble them for loading. Pinnacle shall use commercially reasonable efforts to minimize expiration of date sensitive Products:

(d) **Coordinate with Transportation Services Provider.** Coordinate and work closely with the transportation services provider and use commercially reasonable efforts to increase punctual and efficient delivery of Products to Furr's stores, including without limitation, organizing and scheduling order printout, distribution and marshaling to suit published load departure times:

(e) **Coordinate with OMI Warehouse Management System.** Use commercially reasonable efforts to coordinate and work closely with Furr's personnel operating the OMI Warehouse Management System to: (i) maximize the punctual and efficient purchase of Products from vendors and shipment of such Products to the Premises; (ii) schedule inbound vendor deliveries and backhauls for maximum efficiency; and (iii) communicate with buyers and/or vendors regarding optimum pallet configuration to maximize storage and handling efficiency as well as freight efficiency:

(f) **Monitor Labor Performance.** Monitor productivity and performance of Premises employees and, if necessary in the reasonable business judgment of Pinnacle, initiate corrective actions where unfavorable trends are observed:

(g) Manage Slotting, Loading, etc. Use commercially reasonable efforts to manage product slotting, order cubing, and trailer loading to achieve efficient unloading at the stores, high utilization, and minimum transport damage;

(h) Order Accuracy. Perform statistical and spot checks as reasonably necessary to verify order accuracy and, if necessary in the reasonable business judgment of Pinnacle, initiate corrective measures;

(i) Store Returns. Receive, sort, and reprocess store returns, including returns to stock or reporting by vendor for damage claims;

(j) Returns to Vendor. Process all "return to vendor" Products and/or delivery of such Products to a third party reclamation center.

(k) Housekeeping Staff. Use commercially reasonable efforts to provide and manage a housekeeping staff to maintain the level of cleanliness required by the FDA and all applicable health codes;

(l) Maintenance Staff. Provide and manage a maintenance staff to service the Premises and the Warehouse Assets;

(m) Productivity Improvement Programs. Use commercially reasonable efforts to identify, confirm, and initiate and manage productivity improvement programs to maximize the efficiency and effectiveness of the Premises;

(n) Weekly Reports. Develop and provide a format for weekly reports, mutually acceptable to the parties, by which operating statistics and trends can be shared with Furr's management, including information such as:

- i. Receiving activity: loads, cases, pallets, cube;
- ii. Shipping activity: orders, cases, cube loads;
- iii. Premises fill rate;
- iv. Premises damages, stock shortages, scratches (by department, by day);
- v. Labor hours by function, direct and indirect;
- vi. Labor productivity by function, direct and indirect;
- vii. Order polling versus warehouse availability;
- viii. Order selection cycle;
- ix. Order availability versus polling time;
- x. Targeted versus actual trailer loading time; and
- xi. Operating expenses by category (can be monthly); and

(p) Monthly Review Meetings. Conduct regularly scheduled monthly review meetings with Furr's and Transportation Services Provider to review:

- i. volumes and costs associated with the previous month's activities and to develop forecasts for the coming month;
- ii. possible problems, opportunities, and unfavorable trends for attention and resolution by Furr's and Pinnacle's management;
- iii. the training, and management of all personnel involved in the receipt, storage, order selection, and shipment of Products to the stores;
- iv. the scheduling of inbound vendor deliveries and backhauls for maximum efficiency of Pinnacle's and/or other carriers' resources;

marshaling to suit published load departure times:

- x. store level delivery problems, opportunities, and schedule adjustments (pulling and delivery); and
- xi. transportation expenses for the prior month.

2.2 Furr's Obligations - During the term of this Agreement, Furr's shall use commercially reasonable efforts to perform the following:

- a. Provide store orders through the OMI Warehouse Management System in accordance with agreed upon lead times;
- b. Spread ordered volumes evenly through the week, to the extent the Approved Warehouse Budgets are based upon such volume spread;
- c. Advise Pinnacle of any special or promotional activity and store openings or closures as early as possible;
- d. Assist and cooperate with Pinnacle in securing changes to buying practices and vendor procedures and product presentation, as identified by Pinnacle and reasonably acceptable to Furr's, so as to improve efficiency;
- e. Make changes in its procedures recommended by Pinnacle to improve efficiency, so long as such changes are reasonably acceptable to Furr's;
- f. Implement adequate support arrangements for the OMI Warehouse Management System and any other systems in use in the operation;
- g. With the assistance of the drivers, unload deliveries efficiently at Furr's stores and return distribution equipment from previous deliveries promptly;
- h. Insure that vendors comply with agreed policies and procedures; and
- i. Establish a minimum level for store claims and implement policies to insure an efficient and open process among stores.

2.3 Key Performance Indicators: Warehouse Service Specifications - Pinnacle will provide the Warehouse Services substantially in accordance with the following (as adjusted from time to time, the "Key Performance Indicators"):

<u>Key Performance Indicator</u>	<u>Requirement</u>
Order Accuracy	more than 98%
Cost per case	at or less than the Flex Budget
On-time presentation for loading and delivery to the stores	more than 95%
Scratches (selection errors)	less than 1/2 of 1%

- v. the communication with buyers regarding optimum pallet configuration to maximize storage, handling, and freight efficiencies;
- vi. the verification of product quality, quantity, and order accuracy at receiving;
- vii. the administration of putaway and replenishment systems, including fine-tuning and adjustments to slotting logic and parameters to maintain operating efficiency;
- viii. the scheduling of staff and adjusting shifts of operation to suit seasonal and business peaks;
- ix. the organization and scheduling order printout, distribution and marshaling to suit published load departure times;
- x. store level delivery problems, opportunities, and schedule adjustments (pulling and delivery); and
- xi. transportation expenses for the prior month.

2.2 **Furr's Obligations** - During the term of this Agreement, Furr's shall use commercially reasonable efforts to perform the following:

- a. Provide store orders through the OMI Warehouse Management System in accordance with agreed upon lead times;
- b. Spread ordered volumes evenly through the week, to the extent the Approved Warehouse Budgets are based upon such volume spread;
- c. Advise Pinnacle of any special or promotional activity and store openings or closures as early as possible;
- d. Assist and cooperate with Pinnacle in securing changes to buying practices and vendor procedures and product presentation, as identified by Pinnacle and reasonably acceptable to Furr's, so as to improve efficiency;
- e. Make changes in its procedures recommended by Pinnacle to improve efficiency, so long as such changes are reasonably acceptable to Furr's;
- f. Implement adequate support arrangements for the OMI Warehouse Management System and any other systems in use in the operation;
- g. With the assistance of the drivers, unload deliveries efficiently at Furr's stores and return distribution equipment from previous deliveries promptly;
- h. Insure that vendors comply with agreed policies and procedures; and
- i. Establish a minimum level for store claims and implement policies to insure an efficient and open process among stores.

2.3 **Key Performance Indicators: Warehouse Service Specifications** - Pinnacle will provide the Warehouse Services substantially in accordance with the following (as adjusted from time to time, the "Key Performance Indicators"):

<u>Key Performance Indicator</u>	<u>Requirement</u>
Order Accuracy	more than 98%
Cost per case	at or less than the Flex Budget
On-time presentation for loading and delivery to the stores	more than 95%
Scratches (selection errors)	less than 1/2 of 1%

On or before January 1, 1999, the parties will determine whether to adjust any of the Key Performance Indicators and/or Warehouse Service Specifications to apply from the period from January 2, 1999 to June 19, 1999. On or before June 19, 1999, the parties will discuss whether to adjust any of the Key Performance Indicators and/or Warehouse Service Specifications for the period from June 19, 1999 until December 31, 1999. On or before December 31, 1999, the parties will discuss whether to adjust any of the Key Performance Indicators and/or Warehouse Service Specifications for the period from January 1, 2000 until the Agreement terminates. The parties also will review the Key Performance Indicators and/or Warehouse Service Specifications annually as part of the budget and remuneration procedures set forth in Schedule D. If the parties cannot reach agreement on adjustment of the Key Performance Indicators and/or Warehouse Service Specifications at either time, the matter shall be resolved pursuant to Section 11.2. Until the matter is resolved, the Key Performance Indicators and Warehouse Service Specifications then in effect shall remain in effect.

ARTICLE 3 BUDGETS AND REMUNERATION

3.1 **Start-up Budget** - Attached as Schedule E-1 is the agreed-upon budget (the "Start-up Budget") for all reimbursable costs ("Start-up Costs") to be incurred by Pinnacle during the period beginning on June 29, 1998, and ending on January 2, 1999 (the "Start-up Period") in preparation for and commencement of the Warehouse Services under this Agreement. Furr's shall reimburse Pinnacle for all Start-up Costs, as well as any other costs not included in the Start-up Budget that have been approved in writing by Furr's, as incurred by Pinnacle in connection with the Warehouse Services.

3.2 **Budget and Remuneration Procedures** - Schedule D sets forth the procedures for the establishment of budgets, budget variances, and remuneration which the parties agree shall apply for the term of this Agreement. Furr's agrees to pay Pinnacle the remuneration as set forth on Schedules D and G. The parties agree that, subject to Section 8.4, if a proposed Cost is not budgeted, Furr's will pay or reimburse Pinnacle for all such Costs if such Costs were, in the sole judgment of Pinnacle, necessary or advisable for Pinnacle to comply with its obligations under this Agreement or to perform the Warehouse Services. Furr's shall have the right to direct Pinnacle to cease incurring such non-budgeted Costs; provided, however, that Pinnacle shall have no liability for any loss or adverse consequences resulting from cessation of such Cost. Pinnacle shall promptly notify Furr's that Pinnacle is incurring non-budgeted Costs.

3.3 **Taxes** - All amounts payable under this Agreement shall be paid together with any applicable sales taxes, goods and services taxes and any other applicable taxes and duties.

3.4 **Interest** - Any amount payable under this Agreement which is not paid when due shall bear interest from the due date at the rate per annum equal to the Prime Rate plus 3%, calculated daily and paid at the time payment of such amount is made.

3.5 **Access to Premises and Records** - Pinnacle shall maintain separate books of account in respect of its activities relating to the provision of the Warehouse Services to Furr's, in accordance with generally accepted accounting principles consistently applied. Pinnacle shall make available to Furr's upon Furr's reasonable request, all relevant documents and records relating to the provision of the Warehouse Services by Pinnacle. Pinnacle shall allow representatives of Furr's designated from time to time (and accepted by Pinnacle, acting reasonably) to visit and inspect the Premises and review any records relating to the Warehouse Services located at the Premises, on reasonable notice and within normal business hours, provided the representatives comply with local laws, regulations and rules relating to safety and, at Pinnacle's option, are accompanied at all times by a designated representative of Pinnacle. Pinnacle shall also provide

reasonable access to the Premises and to Pinnacle's books of account relating to the Warehouse Services provided to Furr's, on not less than 48 hours' notice and during normal business hours.

ARTICLE 4 LOSS AND DAMAGE TO PRODUCTS

4.1 **Liability for Loss and Damage** - The parties acknowledge that some losses and destruction of and damage to Products will occur in the ordinary course of business. The amount, if any, by which the total amount of any Products, valued at cost, that are lost, damaged, or destroyed in any Quarter exceeds the Stock Loss Tolerance (as defined below) for the Quarter is referred to as "Loss Excess." The Loss Excess shall be determined in accordance with a method to be agreed upon by the parties on or before December 31, 1998. Pinnacle shall be liable to Furr's for any Loss Excess; provided, however, that Pinnacle's liability in any Quarter for the aggregate of Loss Excess shall be limited to the amount of Base Management Fees to which Pinnacle would otherwise have been entitled for such Quarter; and, provided, further, however, that Pinnacle shall not be liable for any Loss Excess for any period prior to the time that the parties have established satisfactory inventory control systems and procedures and a mechanism for Furr's to make claims for destruction. The parties shall establish such inventory control systems and procedures on or before December 31, 1998, so long as Furr's timely performs all work required of Furr's to put the systems and processes in place.

4.2 **Payment for Loss and Damage** - Physical inventory counts will be conducted in accordance with the timetable set forth in the Warehouse Service Specifications. Physical inventory counts will be reconciled as of the end of each Quarter and, within 30 days after the end of each Quarter, Pinnacle shall pay Furr's the amount, if any, payable in respect of the Loss Excess. If Pinnacle disputes any portion of the Loss Excess, the matter shall be resolved pursuant to Section 11.2.

4.3 **Calculation of Loss** - Any loss suffered by Furr's based upon stock loss shall be calculated based upon the cost of the Products, rather than retail value. Pinnacle shall use commercially reasonable efforts to send damaged products to a third party reclamation center or, if the center will not accept them, to dispose of any damaged Products in a timely manner and for a reasonable price. Furr's shall make available to Pinnacle upon Pinnacle's reasonable request all relevant documents and records relating to: (i) the determination of the historical cost of any Products lost, damaged or destroyed, and (ii) the proceeds of disposition of any damaged Products.

4.4 **Representations and Warranties Regarding Products** - Furr's represents and warrants to Pinnacle that:

(a) all Products will be safe for storage and handling provided they are dealt with by Pinnacle in accordance with all reasonable instructions in that regard given by Furr's to Pinnacle;

(b) none of the Products comprises, contains or is packaged in any dangerous, noxious or illegal substance; and

(c) to the extent that any Product is perishable or liable to deteriorate in time, Pinnacle has been provided with full details of the manner in which the Product is to be stored and the time after which the Product is liable to deteriorate.

4.5 **Unsafe Goods** - Pinnacle shall have the right to refuse to accept, handle or store Products that Pinnacle reasonably determines are not safe for storage or handling.

4.6 **Stock Loss Tolerance** - "Stock Loss Tolerance" shall mean a loss of Products resulting from acts or omissions of Pinnacle and excluding any loss resulting from any of the matters set forth on Schedule H, in excess of 1/2 of 1 (.5)% of the cost of goods shipped per Fiscal Accounting Period, from the date hereof through January 2, 1999. On January 3, 1999, the parties shall determine a new Stock Loss Tolerance for use through June 19, 1999. On or before June 19, 1999, the parties shall determine a new Stock Loss Tolerance for use through the remainder of the term of this Agreement. If the parties are unable to agree on a Stock Loss Tolerance figure for any period, the matter shall be resolved pursuant to Section 11.2. Until the matter is resolved, the Stock Loss Tolerance then in effect shall remain in effect. If the Stock Loss Tolerance is set below 1/2 of 1 (.5)% for any Quarter, the total amount by which the Products, valued at cost, that are lost, damaged or destroyed are below the Stock Loss Tolerance shall be carried forward and credited against any future Loss Excess liability.

ARTICLE 5 INDEMNIFICATION AND INSURANCE

5.1 **Mutual Indemnification** - Each party (an "indemnifying party") agrees to indemnify and hold harmless the other party, its officers, directors, stockholders, employees and agents, from and against any and all losses, damages, claims, liabilities, causes of action, costs and expenses, including but not limited to reasonable legal fees, for injury to or death of any person or loss or damage to or loss of use of property arising out of the indemnifying party's negligence or other fault or any material breach by the indemnifying party of its obligations under this Agreement. Pinnacle's indemnification obligations shall also be the liability and obligation of Tibbett & Britten, as set forth in a written undertaking executed by Tibbett & Britten.

5.2 **Limitations on Liability** - In no event shall either party be liable to the other party under the foregoing indemnities or for any breach or alleged breach of this Agreement to the extent resulting from any of the following:

- (a) losses for which the other party is entitled to recover under the policy or policies of insurance referred to in Sections 5.5 or 5.6 (or would be entitled to recover, but for a failure to carry and maintain insurance in accordance with Section 5.5 or 5.6);
- (b) force majeure (as defined in Article 6); or
- (c) lost profits, indirect, incidental, or consequential losses or damages.

The foregoing shall not affect or limit Pinnacle's rights to recover accrued and unpaid Management Fees, subject to Furr's right of setoff or recoupment, if any. In addition, Pinnacle shall not be liable to Furr's for loss caused by any of the factors set forth on Schedule H (A), and Furr's shall not be liable to Pinnacle for loss caused by any of the factors set forth on Schedule H (B). If there is a material breach of this Agreement and such breach cannot be cured or otherwise resolved by agreement of the parties, the non-breaching party's sole remedy with respect to such material breach shall be to terminate this Agreement and seek indemnification from the appropriate party.

5.3 **Product Liability** - Furr's agrees to indemnify and hold harmless Pinnacle, its officers, directors, stockholders, employees and agents, from and against any and all losses, damages, claims, liabilities, causes of action, costs and expenses, including but not limited to reasonable legal fees, arising out of or relating to:

- (a) product liability claims or the handling, possession, storage, use or any other dealing by any person of any Products, or any non-compliance by Furr's with any applicable law relating to the Products or the packaging, handling, storage or use of any of the Products, but

excluding any claims to the extent they arise from the negligence or willful misconduct of Pinnacle or its agents, servants, or employees; or

(b) any claims or proceedings brought or commenced by a third party as a result of Furr's entering into this Agreement or the performance of Furr's obligations under this Agreement.

5.4. Indemnification Procedure -

(a) In the event any claim or any suit is filed against either party for which the other party may be required to provide indemnification, the party against whom the claim is so asserted shall promptly notify the indemnifying party (the "Indemnification Notice") of such claim or suit as promptly as practicable but in no event later than 15 days after its receipt (provided that failure to so notify the indemnifying party shall not limit its obligations to indemnify except to the extent it is materially prejudiced by such failure), whereupon the indemnifying party may, by written notice to the indemnified party, undertake the defense of such suit or the settlement of any such claim, with counsel reasonably satisfactory to the indemnified party, at the sole cost and expense of the indemnifying party.

(b) In the event that the indemnifying party, within a reasonable time after receipt of an Indemnification Notice, does not so elect to defend such claim, the indemnified party will have the right (upon further notice to the indemnifying party) to undertake the defense, compromise or settlement of such claim for the account of the indemnifying party, subject to the right of the indemnifying party to assume the defense of such claim pursuant to Subsection 5.4(a) within a reasonable time prior to settlement, compromise or final determination thereof, provided that the indemnifying party reimburses in full all costs of the indemnified party (including reasonable attorneys' fees and disbursements) incurred by it in connection with such defense prior to such assumption.

(c) Anything in this Section 5.4 to the contrary notwithstanding, (i) if the indemnified party believes there is a reasonable probability that a claim may materially and adversely affect the indemnified party, the indemnified party shall have the right to participate in the defense, compromise or settlement of such claim, provided that the indemnifying party shall not be liable for expenses of separate counsel of the indemnified party engaged for such purpose, and (ii) no person (other than the indemnified party) who has undertaken to defend a claim under this Section 5.4 shall, without the written consent of the indemnified party, settle or compromise any claim or consent to entry of any judgment which does not include as an unconditional term thereof the release by the claimant or the plaintiff of the indemnified party from all liability arising from events which allegedly give rise to such claim.

(d) The remedies provided to an indemnified party in this Agreement shall be cumulative and shall not preclude an indemnified party from asserting any other rights or seeking any other remedies against an indemnifying party or its successors or assigns.

5.5. Insurance by Pinnacle - During the term of this Agreement, Pinnacle shall carry and maintain the following policies of insurance issued by recognized, reputable insurers in forms satisfactory to Furr's acting reasonably, and naming Furr's as an additional insured as its interest may appear where applicable and including cross waivers of any right of subrogation:

(a) insurance covering the Products against loss or damage arising from the negligence of Pinnacle or its employees while the Products are in Pinnacle's care and control;

(b) "all risks" broad form insurance for the Premises and all Fixed Assets, all on a full replacement cost new basis without depreciation;

(c) adequate comprehensive public liability insurance, having regard to the nature of Pinnacle's business and the scope of the Warehouse Services;

(d) adequate warehouseman's liability insurance for the Products at the Premises and adequate business interruption insurance, having regard to the nature of Pinnacle's business;

(e) adequate workers' compensation coverage for all eligible employees and adequate temporary workers' coverage;

(f) adequate automobile liability insurance for vehicles owned and/or leased in the name of Pinnacle; and

(g) such insurance policies shall provide (unless prohibited by applicable statute) that written notice of cancellation shall be given to Furr's at least thirty (30) days prior to such cancellation.

The premiums (net of rebates) for such policies shall be included in the Approved Warehouse Budget.

5.6. Insurance by Furr's - During the term of this Agreement (and, in the case of product liability insurance, for a period of five years after termination or expiration of this Agreement) Furr's shall carry and maintain the following policies of insurance issued by recognized, reputable insurers, in forms satisfactory to Pinnacle acting reasonably, and naming Pinnacle as an additional insured as its interest may appear where applicable and including cross waivers of any right of subrogation:

(a) insurance covering the Products against loss or damage on a full replacement cost basis from all risks other than those for which Pinnacle is expressly liable under this Agreement;

(b) insurance covering the Products against loss or damage in transit on a full replacement cost basis;

(c) adequate (in view of the business being conducted) comprehensive public and product liability insurance, having regard to the nature of Furr's business, providing for a limit of liability of not less than \$1.0 million per occurrence; and

(d) adequate business interruption insurance, having regard to the nature of Furr's business.

5.7 Amendment to Insurance Coverage Obligations - The parties may, by written agreement, amend the insurance coverage requirements to provide a more cost-effective structure for the insurance coverage obligations of the parties.

5.8 Proof of Insurance - Each party shall provide the other party with certificates of insurance or other proof of insurance reasonably satisfactory to the requesting party evidencing the coverage and other matters referred to in Sections 5.5 and 5.6 above.

ARTICLE 6 - FORCE MAJEURE

6.1 Force Majeure - The parties will not be liable, in whole or in part, to perform or comply with any of their respective obligations under the Agreement if unable to do so due to

circumstances beyond their reasonable control. In the case of Pinnacle, such circumstances would include, but not be limited to, the non-availability of Furr's products, Premises overstocking, and material variance in actual volumes as compared to forecasts provided by Furr's. The party suffering the force majeure shall forthwith give notice in writing to the other party of such fact. Upon receipt of such notice by the other party representatives of Pinnacle and Furr's shall meet to establish plans and procedures to overcome or mitigate the effects of the force majeure, and the party suffering the force majeure shall use all reasonable efforts to minimize any adverse effects on the other party. Furr's shall pay all reasonable costs and expenses incurred by Pinnacle in overcoming or mitigating the effects of the force majeure, and shall continue to pay all Costs (except for Management Fees) in accordance with this Agreement during the pendency of the force majeure. If the force majeure causes a party to be unable to render substantial performance of its obligations under this Agreement for a period of 60 days after notice thereof, which inability causes material damages to the other party, and the other party can either render such performance itself or obtain such performance from a third party, then the other party may do so until the party suffering the force majeure can resume performance.

ARTICLE 7 EMPLOYEES

7.1 Employees of Pinnacle - During the term of this Agreement, all personnel employed in connection with the provision of the Warehouse Services shall remain employees of Pinnacle and not of Furr's. Furr's shall have no control or right to exercise any control whatsoever over the employees of Pinnacle in the performance of Pinnacle's obligations under this Agreement or any other agreement entered into between Furr's and Pinnacle and Furr's shall not select, supervise, direct or in any other way control or seek to control the employees of Pinnacle.

ARTICLE 8 PREMISES; ASSETS

8.1 Premises - Pinnacle shall conduct its operations at the Premises pursuant to a sublease from Furr's. The sublease agreement between the parties is attached hereto as Schedule I. The sublease shall have terms reasonably satisfactory to Pinnacle and be terminable upon the expiration or termination of this Agreement.

8.2 Warehouse Assets - At Furr's option, Pinnacle shall enter into leases, to be guaranteed by Furr's and non-recourse to Pinnacle, for the Warehouse Assets. Alternatively, the Existing Assets may, upon the mutual agreement of the parties, be purchased from Furr's by Pinnacle at the same price Furr's pays for them, which price is set forth in the Fleming Settlement Agreement; provided, however, that Pinnacle shall pay no more than fair market value for the Existing Assets. If purchased rather than leased, Pinnacle shall pay the purchase price for the Existing Assets on the same date Furr's purchases such assets. All issues of cost allocation for the Existing Assets shall be resolved by Furr's in its reasonable discretion. Pinnacle shall use commercially reasonable efforts to negotiate leases of Warehouse Assets to be assignable to Furr's without charge when this Agreement terminates. All costs of owning or leasing the Warehouse Assets will be included in the Approved Budgets. Furr's shall have the right to approve any proposed lease of Warehouse Assets, which approval shall not to be unreasonably withheld or delayed.

8.3 Warehouse Management System - Furr's will provide Pinnacle with the use of a fully installed, Year 2000 Compliant, properly functioning (in accordance with all specifications and operating manuals) OMI Warehouse Management System, suitable for the intended purpose of Pinnacle's operation of the Premises and provision of the Warehouse Services. At Furr's option, Pinnacle shall lease the OMI Warehouse Management System, as well

as the radio frequency equipment used in connection with the OMI Warehouse Management System, which lease payments shall be included in the annual Approved Warehouse Budgets.

8.4 Acquisition of Additional Warehouse Assets - Pinnacle shall not, without the prior approval of Furr's, such approval not to be unreasonably withheld or delayed:

(a) purchase or otherwise acquire any Warehouse Asset having a value greater than \$5,000; or

(b) enter into any equipment lease, contract or other obligation in connection with the provision of Warehouse Services to Furr's, having a term in excess of three months and providing for payments in excess of \$5,000 in the aggregate.

ARTICLE 9 TERM AND TERMINATION

9.1 Term - This Agreement shall be effective as of and from the Commencement Date and shall terminate on the Termination Date unless extended in accordance with the provision of Section 9.2 or earlier terminated in accordance with the provisions of this Article.

9.2 Mutual Termination Rights - Either party shall have the right to terminate this Agreement:

(a) Nonpayment. At any time, if any substantial amount (i.e. more than \$10,000) owing by one party to another under this Agreement remains unpaid for more than 14 days after the date due, provided that the party to whom the money is owed provides seven days' prior written notice of its intention to terminate this Agreement, and such amount remains unpaid upon the expiration of the seven day notice period, and provided further that this clause does not apply to a bona fide dispute between the parties regarding (i) any amount Pinnacle may owe Furr's for Loss Excess, or (ii) any amount Furr's may owe Pinnacle for Incentive Management Fees;

(b) Insolvency. Immediately upon written notice to a party if such party becomes insolvent, becomes unable to pay its debts as they mature, is the subject of a petition in bankruptcy whether voluntary or involuntary (and in the case of any involuntary petition in bankruptcy, the petition is not dismissed within 60 days after the filing thereof), makes an assignment for the benefit of its creditors, or is dissolved or liquidated except in connection with a bona fide corporate reorganization pursuant to which all of its obligations under this Agreement are assumed by an affiliate;

(c) Material Breach. If, at any time during the term of this Agreement, the other party has committed a material breach of this Agreement, and such breach has not been cured within 45 days after receipt of written notice detailing the nature of such breach; provided, however, that if the breach cannot be cured within said 45 day period, the breaching party shall only be required during such period to commence with due diligence and dispatch the curing of such breach and to prosecute or complete with due diligence and dispatch the curing of such breach. (the failure to so cure or commence such cure to be referred to as a "Default") During the period of seven days following receipt of the notice of breach, representatives of Pinnacle and Furr's shall meet and discuss the breach; or

(d) Change of Control. Either party ("Continuing Party") shall have the right to terminate this Agreement upon 90 days' written notice to the other (the "Other Party") if (i) the Other Party is subject to a Change of Control, as such term is hereinafter defined, and (ii) the Continuing Party, acting reasonably having regard to the financial viability and the nature of the operations of the entity which is assuming control of the Other Party ("Controlling Entity")

determines that the Controlling Entity is not acceptable to it, and provided that it exercises such right of termination within 30 days after it is advised of, or otherwise learns of, the Change of Control. Provided it is legally entitled to do so, each party agrees to provide written notice to the other of any Change of Control prior to or forthwith after such Change of Control occurs, subject, if such notice is provided prior to such Change in Control, to the other party keeping such information strictly confidential, and that information shall not be released without the notifying party's consent, which consent shall not be unreasonably withheld. For purposes of this Agreement, "Change of Control" means:

(i) in the case of Pinnacle, that Tibbett & Britten Group plc ("TBG") shall become a subsidiary of any other body corporate otherwise than as part of a scheme of reconstruction. For the purposes of this sub-clause TBG shall be deemed to have become a subsidiary of another body corporate if as a result of actions by persons acting pursuant to an agreement to which Sections 204 and 205 of the Companies Act 1985 (U.K.) apply TBG would have become a subsidiary of such persons if such persons had together constituted a single body corporate; and

(ii) in the case of Furr's, the legal and beneficial owners of 50% or more of the voting securities of Furr's on the date hereof no longer own at least 50% of such voting securities.

9.3 Furr's Termination Right - Furr's shall have the right to terminate this Agreement as follows:

(a) Failure to Comply with Warehouse Service Specifications or Key Performance Indicators. Upon 60 days' prior written notice to Pinnacle (to be given after the notice of breach required in Section 9.2(c), and Pinnacle's failure to timely cure such breach), if Pinnacle does not materially comply with the Warehouse Service Specifications and/or Key Performance Indicators other than cost per case so as to constitute a material breach under Section 9.2 (c), such termination right to become effective after such breach has become a Default. With respect to Key Performance Indicators, "material" noncompliance means Pinnacle fails to achieve the following average standards during any Quarter: (i) Order Accuracy: 96%; (ii) On-time presentation and delivery to stores: 90%; and (iii) Scratches: 1%.

(b) Net Cost Overrun in 1999 Contract Year. Upon 90 days' prior written notice to Pinnacle, if the actual reimbursable Costs of operating the Premises exceed the annual Flex Budget reimbursable Costs by more than 20% in the 1999 Contract Year, provided however, that if there is such a cost overrun and if Furr's wishes to terminate the Agreement, (A) Furr's must give Pinnacle notice in writing within three months after the determination of such a cost overrun has been made; and (B) Pinnacle shall have the option, within one month of receipt of such notice, to keep the Agreement in force by paying to Furr's an amount sufficient to reduce the cost overrun to no more than 10%;

(c) Net Cost Overrun in Subsequent Contract Years. Upon 90 days' prior written notice to Pinnacle, if the actual reimbursable Costs of operating the Premises exceed the annual Flex Budget reimbursable Costs by more than 10% in any Contract Year after 1999, provided however, that if there is such a cost overrun in any such year, and if Furr's wishes to terminate the Agreement, (A) Furr's must give Pinnacle notice in writing within three months after the determination of such an annual cost overrun has been made; and (B) Pinnacle shall have the option, within one month of receipt of such notice, to keep the Agreement in force by paying to Furr's an amount sufficient to reduce the annual Cost overrun to no more than 5%.

(d) Termination Option After December 31, 1999. Upon 90 days' prior written notice to Pinnacle, Furr's may terminate the Agreement at any time after December 31, 1999, by

paying Pinnacle a lump sum termination fee equal to the lesser of the following: (A) \$3,500,000; or (B) the sum of (i) the amount, discounted to present value at the Prime Rate plus 3% per annum, of the Base Management Fees otherwise payable through December 31, 2003, plus (ii) an amount equal to \$1,400,000 reduced, but in no event to less than \$700,000, by cumulative annual net Cost Overruns under this Agreement and the Transportation Agreement for the period prior to termination ("Cost Overruns"). The Cost Overruns shall be calculated by comparing the annual Flex Budget Reimbursable Costs with the actual Reimbursable Costs. In calculating Cost Overruns, annual Cost savings shall be netted with annual Cost Overruns, but in no event shall the termination fee be increased.

(e) Termination Option After December 31, 2003. Upon 90 days' prior written notice to Pinnacle, Furr's may terminate the Agreement at any time after December 31, 2003, by paying Pinnacle a lump-sum termination fee equal to \$1,400,000 reduced, but in no event to less than \$700,000, by Cost Overruns. In calculating Cost Overruns, annual Cost savings shall be netted with annual Cost Overruns, but in no event shall the termination fee be increased.

(f) Termination Option After December 31, 2005. Upon 90 days' prior written notice to Pinnacle, Furr's may terminate the Agreement at any time after December 31, 2005, by paying Pinnacle a lump-sum termination fee equal to \$700,000, reduced by Cost Overruns. In calculating Cost Overruns, annual Cost savings shall be netted with annual Cost Overruns, but in no event shall the termination fee be increased.

9.4 Procedures on Termination -

(a) If the Agreement has been terminated for any reason other than Pinnacle's termination pursuant to Section 9.2 (a), upon mutual agreement of the parties Pinnacle shall continue to provide the Warehouse Services for an additional 90-day transition period, starting from the date of termination (the "Transition Period"). During the Transition Period, Pinnacle shall continue to provide the Warehouse Services in accordance with this Agreement, and Furr's shall continue to make payments pursuant to the terms of this Agreement and otherwise comply with the Agreement.

(b) At the end of the Transition Period or, if there is no Transition Period then on the date of termination, the following procedures shall apply:

(i) The sublease of the Premises shall terminate;

(ii) Furr's shall have the option, exercisable in writing within 14 days after the Agreement expires or terminates, to acquire the Warehouse Assets (if owned by Pinnacle) at Pinnacle's net book value;

(iii) Furr's shall have the option, exercisable in writing within 14 days after the Agreement expires or terminates, to assume any and all leases of Warehouse Assets;

(iv) Furr's may hire any Pinnacle Employees, subject to the restriction contained in Section 13.7 below, who prior to termination worked at the Premises or otherwise assisted Pinnacle in providing the Warehouse Services;

(v) Furr's shall indemnify, reimburse, and hold Pinnacle harmless for all costs incurred in connection with terminating the Agreement, including without limitation (i) any loss on disposal of Warehouse Assets; (ii) any loss associated with termination of the Warehouse Asset leases including without limitation for the OMI Warehouse Management System and related equipment; and (iii), and the costs associated with the termination of employment obligations, except for relocation expenses of relocated employees. Any insurance proceeds received by

Pinnacle in respect of claims for which Pinnacle has received indemnification shall be reimbursed to Furr's; and

(vi) Furr's shall promptly pay Pinnacle all sums payable to it through the date of expiration or termination.

ARTICLE 10 CONFIDENTIALITY

10.1 **Confidentiality** - Each party shall not, during the term of this Agreement or at any time thereafter, transmit Confidential Information of the other party to any third person either in whole or in part. Each party shall take all reasonable precautions to safeguard the Confidential Information of the other party from unauthorized disclosure and, at a minimum, shall afford the Confidential Information of the other party such precautions and safeguards as it affords to its own confidential information of a similar nature. "Confidential Information" for purposes of this Agreement shall mean all non-public, confidential or proprietary information of either party and its clients and customers, including but not limited to information regarding costing, inventory systems, technology, formulations, transportation, warehouse, administrative and other technical and economic data and information, received by the other party in the course of the negotiation of, or performance of its obligations under, this Agreement. The above restrictions shall not apply to the extent that Confidential Information comes into the public domain through no fault of the other party, is received by the other party from a third party having a bona fide right to disclose such information, or disclosure is required by law.

10.2 **Public Notices** - Neither party shall make any press release or public announcement regarding this Agreement or otherwise publicly disclose any of the terms of this Agreement without the prior written consent of the other party, except where required to do so by law or by the applicable regulations or policies of any State or Federal or other regulatory agency of competent jurisdiction or any stock exchange in circumstances where prior consultation with the other party is not practicable.

10.3 **Requirement to Disclose** - Wherever in this Agreement disclosure is permitted if "required by law."

(a) the term "law" shall be deemed to include (i) any applicable statute, regulation or policy of the United States government, any state or local government or any agency or authority of any of them having jurisdiction over a party or its business or any stock exchange or self-regulatory organization in the securities industry and (ii) any order, demand or subpoena of any such government, agency, authority, exchange or organization or any court of competent jurisdiction; and

(b) such disclosure shall be permitted only if, as promptly as practicable after determining that disclosure is required or after receipt of any such order, demand or subpoena, the party intending to make such disclosure shall notify the other party of such requirement and the scope of the proposed disclosure and shall simultaneously deliver to the other party a copy of such order, demand or subpoena or, if there is none, a written opinion of its counsel describing the legal basis upon which such disclosure is required. The party intending to make such disclosure shall cooperate with all reasonable requests of the other party for assistance in preventing or limiting such disclosure.

ARTICLE 11 DISPUTE RESOLUTION

11.1 **Negotiation** - If a dispute arises under this Agreement that cannot be resolved by the personnel directly involved, either party may give written notice to the other designating an executive officer with appropriate authority to be its representative in negotiations relating to the dispute. Such executive officer shall be an individual who has no direct operational responsibility for the matters contemplated by this Agreement. Upon receipt of this notice, the other party shall, within five business days, give notice to the first party, designating an executive officer with similar authority and without such operational responsibility to be its representative. The designated executive officers (the "Representatives") shall, promptly following whatever investigation each deems appropriate but in no event later than five business days after delivery of the notice by the second party, enter into discussions concerning the dispute. The parties shall arrange for a meeting at a time and place mutually acceptable to both parties. If the Representatives are unable to resolve the dispute within 10 business days after the first meeting, the dispute shall then be referred to the President of Pinnacle and the President of Furr's who, acting in good faith and using reasonable efforts, shall work toward a reasonable and equitable resolution of the dispute.

11.2 **Appointment of KOM to Resolve Arbitrable Disputes** - If (i) the respective Presidents of Pinnacle and Furr's are unable to resolve the dispute within 10 business days from the time the dispute was first referred to them, and the dispute is an Arbitrable Dispute, the parties shall refer the matter to KOM, which will render a final and binding determination. Each party shall submit a proposal to KOM for resolution of the dispute and KOM shall choose one of the proposals, or a combination of the proposals. If KOM is unavailable, the parties shall agree on a mutually acceptable method of mediation or arbitration to resolve the dispute. The parties shall cooperate with any person appointed pursuant to this Article 11 and shall provide him with such information and other assistance as he shall require and his costs shall be paid by such party as he shall determine. If either party reasonably asserts that KOM has a conflict of interest sufficient to disqualify KOM from acting as an arbitrator, the parties will agree on a new arbitrator or, if they are unable to agree, shall each select an arbitrator, and the two selected arbitrators shall select the replacement arbitrator. Each party acknowledges that as of September 23, 1998, it is not aware of any dealings the other party has had with KOM that would be sufficient to create a disqualifying conflict of interest.

11.3 **Resolution of Other Disputes** - If the dispute is not an Arbitrable Dispute, then the parties may either agree to submit the dispute to KOM or some other party for resolution, agree upon binding arbitration through the American Arbitration Association, or seek a resolution through the courts.

ARTICLE 12 GENERAL REPRESENTATIONS AND WARRANTIES

12.1 **By Furr's** - Furr's represents and warrants to Pinnacle as follows:

(a) Furr's is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement. The execution and delivery of this Agreement and the performance of Furr's obligations under this Agreement have been duly authorized by all necessary corporate action on the part of Furr's.

(b) Furr's is not a party to, bound or affected by, or subject to, any indenture, mortgage, lease, agreement, collective agreement, obligation, instrument, charter or by-law provision, statute, regulation, order, judgment, decree, license, permit or law which would be violated, contravened or breached as a result of the execution and delivery of this Agreement, or the performance by Furr's of any of its obligations under this Agreement.

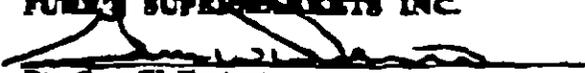
Agreement; or (ii) twelve months following the expiration or termination of this Agreement for any reason whatsoever. Furr's shall not, and shall not permit any of its affiliates to, without the prior written consent of Pinnacle, directly or indirectly hire, solicit, induce or encourage any person who is a managerial employee or agent employed or engaged by Pinnacle or any of its affiliates within one year prior to such solicitation, to leave or otherwise cease being employed or engaged by Pinnacle or any of its affiliates; provided, however, that the foregoing shall not apply to Pinnacle employees who worked at the Premises before being hired by Pinnacle.

13.8 Legal Relationship - The legal relationship of Pinnacle and Furr's to each other shall be that of independent contractors, and neither party shall be the agent or legal representative of the other for any purpose. Neither party shall have the right or authority to bind or obligate the other to any third party for any purpose whatsoever.

13.9 Notice - Any demand, notice or other communication to be given in connection with this Agreement shall be in writing and shall be given by personal delivery, by overnight courier, by registered mail or by electronic means of communication addressed to the recipient at the address shown on the first page of this Agreement or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication shall be conclusively deemed to have been given (i) on the day of actual delivery if given by personal delivery; (ii) on the next business day if given by overnight courier; (iii) on the third business day following deposit in the mail if given by registered mail; and (iv) on the day of transmittal if given by electronic communication during the normal business hours of the recipient and on the next following business day if not given during such hours on any day.

IN WITNESS WHEREOF the parties have executed this Agreement.

FURR'S SUPERMARKETS INC.

By: 
Title: Senior Vice President/CAO

PINNACLE LOGISTICS INC.

By: 
Title: _____

Agreement; or (ii) twelve months following the expiration or termination of this Agreement for any reason whatsoever, Furr's shall not, and shall not permit any of its affiliates to, without the prior written consent of Pinnacle, directly or indirectly hire, solicit, induce or encourage any person who is a managerial employee or agent employed or engaged by Pinnacle or any of its affiliates within one year prior to such solicitation, to leave or otherwise cease being employed or engaged by Pinnacle or any of its affiliates; provided, however, that the foregoing shall not apply to Pinnacle employees who worked at the Promises before being hired by Pinnacle

13.8 **Legal Relationship** - The legal relationship of Pinnacle and Furr's to each other shall be that of independent contractors, and neither party shall be the agent or legal representative of the other for any purpose. Neither party shall have the right or authority to bind or obligate the other to any third party for any purpose whatsoever.

13.9 **Notice** - Any demand, notice or other communication to be given in connection with this Agreement shall be in writing and shall be given by personal delivery, by overnight courier, by registered mail or by electronic means of communication addressed to the recipient at the address shown on the first page of this Agreement or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication shall be conclusively deemed to have been given (i) on the day of actual delivery if given by personal delivery; (ii) on the next business day if given by overnight courier; (iii) on the third business day following deposit in the mail if given by registered mail; and (iv) on the day of transmittal if given by electronic communication during the normal business hours of the recipient and on the next following business day if not given during such hours on any day.

IN WITNESS WHEREOF the parties have executed this Agreement.

FURR'S SUPERMARKETS INC.

By: Gene W. Denison
Title: Senior Vice President/CAO

PINNACLE LOGISTICS INC.

By: Michael Sprague
Title: CHAIRMAN

SCHEDULE A
CERTAIN DEFINITIONS

"Approved Warehouse Budget" has the meaning set forth in Schedule D.

"Arbitrable Disputes" means one of the following disputes between Pinnacle and Furr's under this Agreement: (a) inability to agree upon an Annual Warehouse Budget; (b) inability to agree on the Key Performance Indicators and/or Warehouse Service Specifications; (c) inability to agree on the Stock Loss Tolerance or Loss Excess; or (d) dispute over whether Pinnacle has earned its Incentive Management Fee.

"Base Management Fee" has the meaning set forth in Schedule G.

"Change of Control" has the meaning set out in Section 9.6.

"Commencement Date" means October 19, 1998.

"Contract Year" means a calendar year commencing on January 1 (unless Pinnacle and Furr's otherwise agree), provided that the initial Contract Year of this Agreement shall commence on the Commencement Date and end on December 31, 1998 and the final Contract Year of this Agreement shall end on the date this Agreement expires or is terminated pursuant to Article 9.

"Cost Overruns" has the meaning set forth in Section 9.3(d).

"Costs" includes the following:

(a) all Start-up Costs;

(b) depreciation and amortization on all Warehouse Assets (as defined below) owned by Pinnacle, calculated on the basis of the historical cost of each item on a straight line basis over the expected useful life of the item, using Pinnacle's depreciation policies in accordance with generally accepted accounting principles, and charged from the Commencement Date or, if the item was purchased after that date, from the first day of the Fiscal Accounting Period next following the date of acquisition and the five-year amortization of the OMI Warehouse Management System;

(c) financing charges equal to interest, calculated monthly on the depreciated net book value of the Warehouse Assets (as defined below) owned by Pinnacle at the commencement of each Fiscal Accounting Period, at the rate per annum equal to the Prime Rate for such month plus 1.0%;

(d) all equipment rentals and all charges under any leases of equipment assumed by Pinnacle or entered into by Pinnacle in accordance with the terms of this Agreement (including without limitation leases which constitute capital leases under generally accepted accounting principles) and relating to the provision of the Warehouse Services;

(e) except as otherwise provided in this Agreement, all rent, rental subsidies, additional rent, utilities, property and business taxes, maintenance and other charges, and other costs, liabilities and obligations relating to any leases or subleases of the Premises;

(f) all transportation and freight costs, including fuel, maintenance and payments made to common carriers for freight services, relating to the provision of the Warehouse Services;

- (g) all premiums for the policies of insurance referred to in Section 5.5;
- (h) all direct and indirect labor costs relating to the provision of the Warehouse Services including without limitation salaries, wages, and normal and customary benefits relating to the remuneration of Pinnacle Employees, and payments required be made to any normal and customary pension or other benefit plan or arrangement in respect of Pinnacle Employees;
- (i) all pay in lieu of notice, termination and severance payments and like amounts, and all related costs and expenses, relating to the termination of employment of any one or more Pinnacle Employees, including without limitation any and all reasonable payments made by or on behalf of Pinnacle for vested pension or other accrued benefits or pursuant to COBRA;
- (j) a share of the following costs incurred by Pinnacle with respect to the information processing and related communications devices, equipment, systems, information, data, or software, which are or shall be owned by Pinnacle, pro rated to the extent used in connection with the Warehouse Services (collectively "Systems"):
- (i) all reasonable costs of testing for and correcting or eliminating any computer viruses, worms or other instructions, codes, information, programs or materials which improperly, wrongfully or otherwise interfere with or could interfere with the Systems and/or performance under this Agreement (collectively "Interference Devices");
 - (ii) all reasonable costs associated with making the Systems Year 2000 Compliant (as such term is defined below) and testing for such compliance; and
 - (iii) all reasonable costs, expenses, liabilities, losses or damages incurred or suffered by Pinnacle or any third party resulting from or associated with (1) any such Interference Devices, (2) any of such Systems not being Year 2000 Compliant; and/or (3) any Systems provided by or at the direction of Furr's to Pinnacle, in any form, not being Year 2000 Compliant. The term "Year 2000 Compliant" shall mean any function, process, device or item (including, without limitation, Systems), which, regardless of the particular date, year, century or other chronological variable: (a) can accurately process date information (e.g., accept, store, sort and sequence data input, provide data output and perform calculations and comparisons on dates and portions of dates, including without limitation dates involving leap years); (b) can function without interruption due to a change in date (including, without limitation, a change to a date subsequent to December 31, 1999), ensuring accurately that any results, data or information processed, generated or transmitted in connection therewith, shall be correct, valid and not adversely affected and, if applicable, (c) shall include date data century and millennium recognition, calculations which accommodate same century (and millennium) and multi-century (and millennium) date values and formulae, as well as date data interfaces (to application and operating system software, as applicable) reflecting the correct date, year, century and millennium.
- (k) all other costs, of whatever nature, properly incurred by Pinnacle in connection with the provision of the Warehouse Services in accordance with the terms of this Agreement.

"Daily Peaking" means that the volume of Product units within any product category in the Product Mix which Pinnacle actually receives or ships in a day varies by more than 10% from the average number of product units received or shipped, as the case may be, in a Fiscal Accounting Period (based on the total number of product units received or shipped in the period divided by the number of business days within that period).

"Existing Assets" means those assets to be purchased by Furr's on or about October 19, 1998, as set forth and described in Schedule B.

"Fiscal Accounting Period" means the consecutive periods of approximately four weeks identified in Schedule F or, if no such periods are identified, means a calendar month.

"Flex Warehouse Budget" means the budget resulting from the amendment of the Approved Budget for changes in throughput volumes, Daily Peaking and other volume fluctuations, Product Mix, Warehouse Service Specifications, timeliness of order advice, level of stocking and any other factors outside of Pinnacle's reasonable control.

"Incentive Management Fee" has the meaning set forth in Schedule G.

"Indemnification Notice" has the meaning set forth in Section 5.4.

"KOM" means KOM International, a corporation with its headquarters in Montreal, Canada.

"Key Performance Indicators" has the meaning set forth in Section 2.2.

"Loss Excess" has the meaning set forth in Section 4.1.

"Management Fees" means the Base Management Fee and the Incentive Management Fee.

"Premises" means the premises from which Pinnacle is to provide the Warehouse Services, located at 9820 Railroad Drive and 9601 Railroad Drive, El Paso, Texas, together with any other premises in addition to or substitution for such premises from which the Warehouse Services are provided at any time during the term of this Agreement.

"Prime Rate", means, in respect of any calendar month, means the rate established by Chase Manhattan Bank at the commencement of the calendar month as the reference rate it uses for determining interest rates on United States dollar loans to its customers in the United States and designated as the prime rate.

"Products" means temperature controlled and ambient grocery products and general merchandise, health and beauty care products.

"Product Mix" means the mix of categories of the Products handled by Pinnacle calculated on a unit basis with the categories being as more particularly described in the variance analysis included in the Warehouse Service Specifications, as they may be amended from time to time in new Warehouse Service Specifications.

"Representatives" has the meaning set forth in Section 11.1.

"Quarter" means a period equal to three of Furr's Fiscal Accounting Periods.

"Pinnacle Employees" means employees of Pinnacle engaged principally in the provision of the Warehouse Services to Furr's.

"Start-up Costs" means the costs set forth in the Start-up Budget attached as Schedule E-1 and such other costs relating to Pinnacle's preparation for the provision of Warehouse Services that are approved in writing by Furr's acting reasonably, including, but not limited to, Pinnacle's reasonable costs of hiring employees and any reasonable out-of-pocket costs incurred by Pinnacle.

"Stock Loss Tolerance" has the meaning set forth in Section 4.1.

"TBC" has the meaning set forth in Section 9.2(d).

"Tibbet & Britten" means Tibbet & Britten Group North America, Inc. a Delaware corporation.

"Termination Date" means December 31, 2008.

"Transition Period" has the meaning set forth in Section 9.4 (a).

"Transportation Agreement" means the agreement entered into by Furr's and Pinnacle concurrently with this Agreement for the transport of Products from the Premises to Furr's stores.

"Warehouse Assets" means the Existing Assets, together with the OMI Warehouse Management System and any additional items of plant, machinery, equipment and leasehold improvements acquired by Pinnacle in accordance with the terms of this Agreement and relating to the provision of Warehouse Services.

"Warehouse Services" has the meaning set forth in Article 2.

"Warehouse Service Specifications" has the meaning set forth in Article 2.

SCHEDULE D
BUDGETS AND REMUNERATION

1. **Initial Approved Warehouse Budget** - Attached as Schedule E-2 is the agreed-upon budget (the "Approved Warehouse Budget") for the provision of Warehouse Services during the initial Contract Year. Furr's represents and warrants that to the best of its knowledge, information and belief all information provided to Pinnacle in connection with the preparation of such Approved Warehouse Budget is complete and accurate in all material respects, that such Approved Warehouse Budget adequately reflect the information provided to Pinnacle as well as any assumptions specified by Furr's to be used as a basis for preparing the and Approved Warehouse Budget. The Approved Warehouse Budget shall be adjusted as necessary (using the normal budget agreement process) following a 45-day due diligence period commencing upon the occupation of the Premises by Pinnacle.

2. **Flex Warehouse Budget** - The Approved Warehouse Budget will be retroactively adjusted each month, resulting in monthly and annual "Flex Warehouse Budgets," as defined in Schedule A. The intent of the parties is that the Approved Warehouse Budget shall only be adjusted for factors such as volume, product mix, and other factors that are not within Pinnacle's control.

3. **Review of Performance** - Within 10 days following the end of each Fiscal Accounting Period Pinnacle shall provide to Furr's a report containing a comparison of variances among (i) actual Costs and Management Fees, (ii) budgeted Costs and Management Fees and (iii) Flex Budget Costs and Management Fees for the just completed Fiscal Accounting Period. Within seven days after the receipt of such detailed report, representatives of the parties shall meet to review the report.

4. **Preparation of Subsequent Budgets** - Commencing in 1999, the parties will meet annually, beginning 90 days prior to the end of the Contract Year, to negotiate subsequent Approved Warehouse Budgets. If a dispute arises in such budget process, the matter will resolved pursuant to Section 11.2. Until a subsequent Approved Warehouse Budget has been agreed, the most recent Approved Warehouse Budget will continue in force, and Furr's will make payments to Pinnacle pursuant to Paragraph 9 below at an annual rate equal in amount to the greater of the previous Contract Year's (x) Approved Warehouse Budget, or (y) aggregate actual Costs, as adjusted pursuant to Paragraph 8(c) below.

5. **Monthly Changes to Information** - Prior to each Fiscal Accounting Period Furr's shall advise Pinnacle of any anticipated changes to the forecasted throughput volumes, Daily Peaking and other volume fluctuations, Product Mix, service specifications and other information used as the basis for preparation of the Approved Warehouse Budget.

6. **Change in Contract Year** - If at any time during the term of this Agreement the definition of Contract Year is changed, the following provisions will apply:

(a) if such change results in an extension to the then-current Contract Year, the Approved Warehouse Budget will be extended accordingly; and

(b) if such change results in an abridgment of the then-current Contract Year, Furr's and Pinnacle will negotiate an amended Approved Warehouse Budget (consistent with the existing Approved Warehouse Budget) in accordance with this Schedule D for the shortened Contract Year.

8. **Rates for Service**

(a) In addition to any other amounts payable hereunder, as consideration for performing the obligations under this Agreement, Pinnacle shall receive from Furr's payment for this Contract Year and for each Contract Year thereafter of an amount equal to the total of (i) the Base Management Fee (calculated in Schedule G) for that Contract Year plus (ii) all Costs for that Contract Year and (iii) an annual amount of \$240,000 (the "Overhead Contribution") representing the agreed contribution by Furr's to Pinnacle's overhead costs which are not separately identifiable with respect to Pinnacle's operating overhead.

(b) In addition to the Base Management Fee, Pinnacle shall also receive from Furr's the Incentive Management Fee, as determined in Schedule G.

(c) The Overhead Contribution shall be adjusted each Contract Year by a percentage equal to that percentage by which the non-seasonally adjusted U.S. City Average Food at Home Consumer Price Index for All Urban Consumers (1982 - 1984 = 100), as available on the first day of the new Contract Year from the Bureau of Labor Statistics of the United States Department of Labor, or any successor index ("CPI"), varies from the same on such day of the prior year.

(d) If the scale, scope or complexity of the Warehouse Services changes materially from that contemplated at the time of entering into of this Agreement, the Base Management Fee, the Incentive Management Fee and the Overhead Contribution will be adjusted by an amount that the parties agree, acting reasonably, is appropriate to enable Pinnacle to realize a commercially reasonable return for the provision of the changed Warehouse Services. Changes in volume alone shall not constitute such a material change, so long as the capacity of the Premises is not exceeded.

9. Invoice and Payment - Pinnacle shall invoice Furr's no later than ten days prior to the commencement of each Fiscal Accounting Period for that period's total Costs set forth in the Approved Warehouse Budget, Overhead Contribution and Base Management Fee. Furr's shall pay the invoiced amount by no later than 4:00 p.m. on the 15th day of such Fiscal Accounting Period by direct transfer of funds to Pinnacle's bankers as directed by Pinnacle. If such day is not a business day, payment shall be made on the first business day immediately preceding such day.

10. Settlement of Variances - Any differences between the Costs, Overhead Contribution and Management Fees set forth in the Approved Warehouse Budget, invoiced pursuant to paragraph 9 of this Schedule, and actual Costs incurred, Overhead Contribution and Management Fees for any Fiscal Accounting Period, together with any Incentive Management Fee pursuant to Schedule G, less stock losses in excess of the Stock Loss Tolerance, shall be settled by the parties by check, bank draft or direct transfer of funds to the receiving party's bankers, no later than 10 days following the date of delivery of the report referred to in paragraph 3 of this Schedule. Notwithstanding any failure to timely settle any variances, the full amount of invoiced Management Fees and all Costs shall be paid to Pinnacle without off-set or reduction of any kind.

SCHEDULE G
MANAGEMENT FEES

1. The "Base Management Fee" will be \$560,000 per year commencing on October 15, 1998 and \$1,120,000 per year commencing on October 15, 1999, as adjusted pursuant to paragraphs 2 and 3 below

2. Pinnacle shall receive an "Incentive Management Fee" of up to \$200,000 per Contract Year, reflecting an incentive for compliance by Pinnacle with the annual Approved Warehouse Budget and the Warehouse Service Specifications, and the achievement of Key Performance Indicators. For each of the Key Performance Indicators Pinnacle meets in each Quarter, Pinnacle shall receive the following percentage of the maximum Incentive Management Fee for such period:

<u>Key Performance Indicator</u>	<u>Percentage</u>
Order Accuracy	25%
Cost per case	25%
On-time presentation for loading	25%
Scratches	25%

Pinnacle shall receive the Incentive Management Fee on a pro rata basis in the final Contract Year and, notwithstanding the fact that the Warehouse Service Specifications and Key Performance Indicators shall not be agreed upon or in effect in the initial Contract Year, Pinnacle shall receive the maximum Incentive Management Fee on a pro rata basis in the initial Contract Year unless Furr's is reasonably dissatisfied with Pinnacle's performance of the Warehouse Services in such Contract Year.

3. In addition, the Management Fees shall be further adjusted by a percentage equal to that percentage by which the non-seasonally adjusted U.S. City Average Food at Home Consumer Price Index for All Urban Consumers (1982 - 1984 = 100), as available on the first day of the new Contract Year from the Bureau of Labor Statistics of the United States Department of Labor, or any successor index ("CPI"), varies from the same on such day of the prior year.

SCHEDULE H
LIMITATIONS ON LIABILITY

A. Limitations on Pinnacle's Liability

(a) any significant operational or organizational change of Pinnacle, change in personnel or other resources of Pinnacle, or change in working methods of Pinnacle, which takes place at the direction of Furr's:

(b) the unreasonable withholding or delay by Furr's in granting authority (following a written request by Pinnacle) to incur any expenditure or enter into any lease or other agreement or obligation of a kind referred to in Section 8.4:

(c) any non-availability of the Products beyond Pinnacle's control:

(d) any loss directly arising from significant breakdown in Furr's computer system or any failure of any Furr's hardware or software utilized in the provision of the Warehouse Services to be Year 2000 Compliant:

(e) any material variation in throughput volumes, Daily Peaking and other volume fluctuations, or Product Mix, if Pinnacle is not able, after using commercially reasonable efforts, to adjust for such material variation:

(f) delivery to the Premises of any faulty or damaged or badly packaged Products:

(g) any overstocking of the Products not caused by the negligence of Pinnacle:

(h) any error, omission, or delay in consents, instructions, or information provided by Furr's:

(i) losses of or damages to Products while in the care or control of third parties, including, without limitation, while in transit (and not in the care or control of Pinnacle) or while at locations not owned or leased by Pinnacle; or

(j) losses or injuries to Furr's employees on the Premises through no fault of Pinnacle.

B. Limitations on Furr's Liability

(a) any losses, injury, or damages suffered by any Pinnacle Employee that is not the fault of Furr's.



PINNACLE LOGISTICS OPERATING BUDGET 4TH QUARTER 1998

Revised September 25, 1998

Pinnacle Proj.
P11-13/1998
11 weeks

PAYROLL EXPENSES

1. Hourly & Outside labor	\$1,009,800.00
2. Benefits at 45%	\$ 484,704.00
3. Supervision & Clerical	\$ 200,108.00
4. Benefits at 35%	\$ 70,037.00
5. Management overhead	\$ 127,000.00
6. Benefits at 35%	\$ 44,480.00
7. Central overhead	\$ 51,000.00

TOTAL PAYROLL \$1,967,097.00

EXPENSES

8. Supplies	\$ 30,000.00
9. Pellets	\$ 63,000.00
10. Repairs	\$ 43,000.00
11. Travel	\$ 7,500.00
12. Specials	\$ 8,000.00
13. Demurage	\$ 0.00
14. Misc.	\$ 3,000.00
15. Sundries	\$ 0.00
16. Depreciation	\$ 62,000.00

TOTAL EXPENSES \$218,500.00

BUILDING & STORAGE

17. Building repairs	\$ 27,000.00
18. Building supplies	\$ 1,000.00
19. Building lease	
DC - 9820 Railroad	\$ 56,000.00
Morrill - 9730 Railroad	(\$ 3,000.00)
Mikard - 10800 Railroad	\$ 0.00
Azar - 9901 Railroad	\$ 0.00 (1)
20. Taxes - bldg.	\$112,000.00
21. Utilities	\$134,000.00
22. Security	\$ 30,000.00



PINNACLE LOGISTICS OPERATING BUDGET 4TH QUARTER 1998

BUILDING & STORAGE (cont.)

23. Misc.	\$ 42,000.00
24. Insurance	\$ 33,000.00
25. Adjustments	\$ 0.00
26. Outside storage	\$ 0.00

TOTAL BLDG & STORAGE \$432,000.00

WHSE OPERATING EXPENSES \$2,835,587.00

TRANSPORTATION

27. Gross expenses	\$1,752,000.00
28. Backhaul credits	(-\$ 212,000.00)

TRANSPORTATION EXPENSE \$1,550,000.00

TOTAL WHSE/TRANS EXPENSE \$4,388,587.00

29. Tibbett & Britten fees	\$118,500.00
30. Tibbett & Britten performance bonus	\$ 42,300.00

GRAND TOTAL WHSE/TRANS \$4,549,387.00

Notes

1. Client is responsible for Millard and Azar lease elimination, or payment in event of failure to eliminate the lease.



September 25, 1998

**Pinnacle Logistics
Operating Budget Assumptions for 4th Quarter 1998
(Updated 08/09/26)**

1. A fully operational warehouse management system is provided.
2. Deliveries will be made on a fixed schedule based on the current USF Logistics practices.
3. Millards will operate per status quo; management of Millards will be the responsibility of the client.
4. Employee benefits and workers compensation is based on information provided by the client.
5. Capital expenditures not included are outlined in the start up capital budget.
6. The building staffing levels will remain constant.
7. All radio frequency equipment associated with the warehouse management system has been specified by OMI and assumed to be sufficient.
8. Product quality on receipt is the client responsibility.
9. Inventory levels will not exceed 85% of the reserve capacity in any individual department on a consistent basis.
10. The building meets the regulatory needs of all health and safety acts, rules and regulations.
11. All the lumping charges are the direct responsibility of the client.
12. The volumes will not change significantly from what has been budgeted.
13. All costs associated with the warehouse management system startup including year-end inventory, labels, invoices and training have been budgeted by the client.
14. Transportation remains with USF Logistics as per quotation including fleet reduction.
15. Lease rates are based on information provided by the client.
16. Current billing schedules will remain unchanged.

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FURRS

PAGE 95



**Pinnacle Logistics
Operating Budget Assumptions for 4th Quarter 1998
(Updated 98/09/24)**

17. Current Item/aku department will remain unchanged.
18. Current product reclamation procedure will remain unchanged.
19. All pieces shipped and received will pass through the system and be accompanied by the Triceps base system documents.
20. Handbills will be managed through system and the volume will not materially increase.
21. Outside storage costs are not included in the budget model.
22. Security budget number does not include an internal auditing process.

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VII. Start-Up Budget

Item	Qty	Unit	Unit Price	Subtotal	Quantity	Unit Price	Total
Office Supplies	100	each	0.50	50.00	100	0.50	50.00
Printing	500	pages	0.10	50.00	500	0.10	50.00
Travel	10	trips	500.00	5,000.00	10	500.00	5,000.00
Legal Fees	100	hours	100.00	10,000.00	100	100.00	10,000.00
Equipment	1	unit	10,000.00	10,000.00	1	10,000.00	10,000.00
Insurance	12	months	1,000.00	12,000.00	12	1,000.00	12,000.00
Utilities	12	months	1,000.00	12,000.00	12	1,000.00	12,000.00
Contingency	1	month	10,000.00	10,000.00	1	10,000.00	10,000.00
Total				47,000.00			47,000.00

UNDERTAKING

THIS UNDERTAKING is executed this 23rd day of September, 1998, by Tibbet & Britton North America Group, Inc. a Delaware corporation ("Tibbet & Britton").

RECITALS

A. On even date herewith, Pinnacle Logistics, Inc., a Delaware corporation ("Pinnacle"), a wholly-owned subsidiary of Tibbet & Britton, entered into a certain Warehousing and Distribution Agreement (the "Agreement") with Furr's Supermarkets, Inc., a Delaware corporation ("Furr's");

B. Section 5.1 of the Agreement, entitled "Mutual Indemnification," sets forth certain indemnification obligations of Pinnacle to Furr's;

C. Section 5.1 of the Agreement requires that Tibbet & Britton execute a written undertaking that Pinnacle's indemnification obligations shall also be the liability and obligation of Tibbet & Britton, to the same extent as if Tibbet & Britton had directly agreed to such indemnification obligations with Furr's;

D. Tibbet & Britton acknowledges that its willingness to execute the undertaking is a material inducement to Furr's to enter into the Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tibbet & Britton hereby agrees and undertakes that Pinnacle's indemnification obligations to Furr's set forth in the Agreement shall also be the liability and obligation of Tibbet & Britton, to the same extent as if Tibbet & Britton had directly agreed to such liability and obligation with Furr's. Tibbet & Britton's liability and obligation under this Undertaking shall be enforceable by Furr's, and shall remain in full force and effect until Pinnacle's liability and obligations under section 5.1 of the Agreement have been terminated or extinguished.

EXECUTED on the date first written above.

**TIBBET & BRITTON NORTH AMERICA
GROUP INC.**

By: Michael Sprague
Title: _____

ACCEPTED:

FURR'S SUPERMARKETS, INC.

By: [Signature]
Title: Senior Vice President/CAO

9-24-1998 4:21 PM FROM FURR'S EXECUTIVES 1 585 344 8818
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BY: JACOBVITZ LAW FIRM 09/24/98 17:17: 1 808 344 0810 - JACOBVITZ LAW FIRM: PAGE 3

UNDERTAKING

THIS UNDERTAKING is executed this ___ day of September, 1998, by Tibbett & Britten North America Group, Inc. a Delaware corporation ("Tibbett & Britten").

RECITALS

A. On even date herewith, Pinnacle Logistics, Inc., a Delaware corporation ("Pinnacle"), a wholly-owned subsidiary of Tibbett & Britten, entered into a certain Warehousing and Distribution Agreement (the "Agreement") with Furr's Supermarkets, Inc., a Delaware corporation ("Furr's");

B. Section 5.1 of the Agreement, entitled "Mutual Indemnification," sets forth certain indemnification obligations of Pinnacle to Furr's;

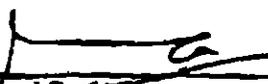
C. Section 5.1 of the Agreement requires that Tibbett & Britten execute a written undertaking that Pinnacle's indemnification obligations shall also be the liability and obligation of Tibbett & Britten, to the same extent as if Tibbett & Britten had directly agreed to such indemnification obligations with Furr's;

D. Tibbett & Britten acknowledges that its willingness to execute the undertaking is a material inducement to Furr's to enter into the Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tibbett & Britten hereby agrees and undertakes that Pinnacle's indemnification obligations to Furr's set forth in the Agreement shall also be the liability and obligation of Tibbett & Britten, to the same extent as if Tibbett & Britten had directly agreed to such liability and obligation with Furr's. Tibbett & Britten's liability and obligation under this Undertaking shall be enforceable by Furr's, and shall remain in full force and effect until Pinnacle's liabilities and obligations under section 5.1 of the Agreement have been terminated or extinguished.

EXECUTED on the date first written above.

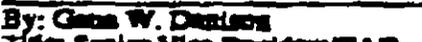
TIBBETT & BRITTEN NORTH AMERICA
GROUP INC.

By: 
Michael Sprague

Title: 

ACCEPTED:

FURR'S SUPERMARKETS, INC.

By: 
Gene W. Davison
Title: Senior Vice President/CAO

TRANSPORTATION SERVICES AGREEMENT

THIS AGREEMENT is effective as of as of March 26, 1999.

BETWEEN:

Furr's Supermarkets Inc.
1730 Montano Road
Albuquerque, New Mexico 87107

Countrywide Logistics Inc.
1031 Highway 22 Suite 301
Bridgewater, NJ 08807

- and -

Telephone No.: (505) 344-6525
Telecopier No.: (505) 344-0810
Attention: Walter R. Doyle
("Furr's")

Telephone No.: (908) 203-1961
Telecopier No.: (908) 203-1962
Attention: Robert Dunn
("Countrywide").

WHEREAS:

A. Pinnacle Logistics Inc. ("Pinnacle") operates warehouse and distribution centers and provides related operational services to its clients;

B. On or about September 23, 1998, Pinnacle and Furr's entered into a Warehousing Agreement (the "Warehousing Agreement") for the provision by Pinnacle of comprehensive, managed warehouse and related services to Furr's;

C. In connection with the Warehousing Agreement, Furr's has agreed to retain Countrywide, an affiliate of Pinnacle, to provide Furr's with certain transportation and related services on the terms and conditions set out in this Agreement.

NOW THEREFORE the parties agree as follows:

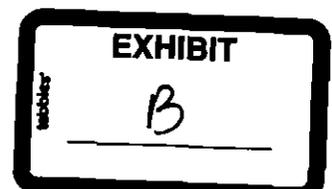
**ARTICLE 1
INTERPRETATION**

1.1 **Definitions** - In this Agreement, unless inconsistent with the context, the terms listed in Schedule A shall have the respective meanings set forth opposite those terms in Schedule A.

1.2 **Headings** - The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless inconsistent with the context, references in this Agreement to Articles and Sections are to Articles and Sections of this Agreement.

1.3 **Extended Meanings** - In this Agreement words importing the singular number only include the plural and vice versa, words importing the masculine gender include the feminine and neuter genders and vice versa and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.

1.4 **Accounting Principles** - Wherever in this Agreement reference is made to a calculation to be made in accordance with generally accepted accounting principles consistently applied, such reference shall be to the generally accepted accounting principles from time to time recommended by the Financial Accounting Standards Board (FASB), or any successor, applicable as at the date on which such calculation is made or required to be made.



1.5 Currency - All references to dollar amounts in this Agreement are to lawful money of the United States of America.

1.6 Proper Law of Contract - This Agreement shall be governed by the laws of the State of New Mexico and the laws of the United States of America applicable in such State.

1.7 Schedules - The following are the Schedules annexed to this Agreement and incorporated by reference and deemed to be part of this Agreement:

- Schedule A - Certain Definitions
- Schedule B - Transportation Assets
- Schedule C - Service Specifications and Key Performance Indicators
- Schedule D - Budgets and Remuneration
- Schedule E - Initial Approved Budget
- Schedule F - Management Fees
- Schedule G - Limitations on Liability

**ARTICLE 2
SERVICES TO BE PROVIDED**

2.1 Transportation Services - During the term of this Agreement, Countrywide will use reasonable skills and exercise reasonable care and diligence in providing to Furr's transportation and related services on the terms and conditions set forth in this Agreement, including without limitation dispatching, backhauling, Contract Motor Carrier, and related services as required to ship the Products from the Warehouse to the Stores, substantially in accordance with the Service Specifications and the Key Performance Indicators (the "Transportation Services").

2.2 Compliance with Laws - Countrywide will provide the Transportation Services as a motor carrier registered with the Secretary of the U.S. Department of Transportation in compliance with Part B of Subtitle IV of the U.S. Code, 49 U.S.C. §13101, et seq. and, insofar as may be applicable, any state or local laws or regulations. This Agreement is entered into by the parties in accordance with 49 U.S.C. §14101(b)(1). Countrywide shall provide the Transportation Services and otherwise perform under this Agreement in conformity in all material respects with all applicable Laws including, without limitation, all rules and regulations of the U.S. DOT, STB and state public utilities commissions applicable to Countrywide's operation of motor carrier equipment, and all local, state and federal health, safety and environmental protection laws, regulations and requirements. Countrywide shall use all commercially reasonable efforts to obtain and maintain all licenses, permits, authorities, and certificates required to perform its obligations under this Agreement.

2.3 Contract Motor Carrier Services - To the extent the Transportation Services provided hereunder are Contract Motor Carrier services, the following provisions shall apply:

a. Such services shall be rendered in compliance with Part B of Subtitle IV of the U.S. Code, 49 U.S.C. 13101 et seq., and, insofar as may be applicable, any state or local laws or regulations;

b. Countrywide represents and warrants that Countrywide will at all times be qualified and authorized to lawfully transport Products accepted under this Agreement for shipment exclusive, unless otherwise agreed, of any material, waste or product deemed to be hazardous waste under applicable law, whether in interstate or intrastate commerce. To the extent of information available to Countrywide, Countrywide shall notify Furr's promptly of any change in such status. This Agreement shall pertain to all transportation provided by Countrywide for the benefit of Furr's regardless of whether the actual commodity or service is regulated or not;

c. The fact that Countrywide may provide motor carrier services to other customers or may hold authority or licenses to provide such operations, and maintains a Tariff/Schedule/Service Guide or similar document related thereto, shall have no applicability to the contract relationship between the parties created under this Agreement. Similarly, any use of form bills of lading or other freight documents referring to "common carrier," "rules," "tariffs," "schedules" and/or "classifications" shall not alter in any manner the contractual relationship created under this Agreement.

d. Countrywide agrees to provide such services as a Contract Motor Carrier. The parties agree that for all purposes, this Agreement is and shall be a contract within the meaning of 49 U.S.C. §14101(b)(1). Countrywide and Furr's mutually waive any and all rights and remedies each may have under Part B of Subtitle IV of the U.S. Code. However, nothing in this Agreement shall be construed as waiving any provision governing Countrywide's compliance with all statutory registration, insurance and/or safety related requirements relative to Contract Motor Carriers.

2.4 Furr's Obligations - During the term of this Agreement, Furr's shall use commercially reasonable efforts to perform the following:

a. Advise Countrywide of any special or promotional activity that might substantially affect the Transportation Services;

b. Make changes in its procedures recommended by Countrywide to improve efficiency, so long as such changes are reasonably acceptable to Furr's; and

c. With the assistance of the drivers, unload deliveries efficiently at the Stores and return distribution equipment from previous deliveries promptly.

ARTICLE 3 BUDGETS AND REMUNERATION

3.1 Initial Approved Budget - Attached as Schedule E is the agreed-upon budget for all reimbursable costs to be incurred by Countrywide during the period between beginning on the Commencement Date, and ending December 31, 1999 (the "Initial Approved Budget").

3.2 Budget and Remuneration Procedures - Schedule D sets forth the procedures for the establishment of budgets, budget variances, and remuneration which the parties agree shall apply for the term of this Agreement. Furr's agrees to pay Countrywide the remuneration as set forth on Schedules D and F. The parties agree that, subject to Section 8.2, if a proposed Cost is not budgeted, Furr's will pay or reimburse Countrywide for all such Costs if such Costs were, in the sole judgment of Countrywide, necessary or advisable for Countrywide to comply with its obligations under this Agreement or to perform the Transportation Services. Furr's shall have the right to direct Countrywide to cease incurring such non-budgeted Costs; provided, however, that Countrywide shall have no liability for any loss or adverse consequences resulting from cessation of such Cost. Countrywide shall promptly notify Furr's that Countrywide is incurring non-budgeted Costs.

3.3 Taxes - All amounts payable under this Agreement shall be paid together with any applicable sales taxes, goods and services taxes and any other applicable taxes and duties.

3.4 Interest - Any amount payable under this Agreement which is not paid when due shall bear interest from the due date at the rate per annum equal to the Prime Rate plus 3%, calculated daily and paid at the time payment of such amount is made.

3.5 Access to Vehicle Maintenance Facility and Records - Countrywide shall maintain separate books of account in respect of its activities relating to the provision of the Transportation Services to Furr's, in accordance with generally accepted accounting principles consistently applied. Countrywide shall make available to Furr's upon Furr's reasonable request, all relevant documents and records relating to the provision of the Transportation Services by Countrywide. Countrywide shall allow representatives of Furr's designated from time to time (and accepted by Countrywide, acting reasonably) to visit and inspect the Vehicle Maintenance Facility and review any records relating to the Transportation Services located at the Vehicle Maintenance Facility, on reasonable notice and within normal business hours, provided the representatives comply with local laws, regulations and rules relating to safety and, at Countrywide's option, are accompanied at all times by a designated representative of Countrywide. Countrywide shall also provide reasonable access to the Vehicle Maintenance Facility and to Countrywide's books of account relating to the Transportation Services provided to Furr's.

3.6 Backhaul and Freight Revenue - Furr's shall receive all net Backhaul revenue, after reimbursement of Countrywide's out of pocket costs incurred because of backhauling. Furr's and Countrywide will divide equally all net Freight revenue. On or before October 25, 1999, Furr's and Countrywide shall agree upon a reasonable budgeted amount for Furr's to receive annually for Freight revenue. Such amounts shall be made a part of the Approved Budgets, and shall be included as a Key Performance Indicator.

ARTICLE 4 PRODUCTS; LIABILITY FOR LOSS DURING TRANSIT

4.1 Liability for Loss and Damage - Any loss or damage to the Products arising from the fault of Countrywide or its employees while the Products are in Countrywide's care and control shall be considered "Stock Loss" under the Warehouse Agreement and shall be subject to the terms and conditions of the Warehouse Agreement relating to "Stock Loss Tolerance."

4.2 Representations and Warranties Regarding Products - Furr's represents and warrants to Countrywide that:

(a) all Products will be safe for storage and handling provided they are dealt with by Countrywide in accordance with all reasonable instructions in that regard given by Furr's to Countrywide;

(b) none of the Products comprises, contains, or is packaged in any dangerous, noxious, or illegal substance; and

(c) to the extent that any Product is perishable or liable to deteriorate in time, Countrywide has been provided with full details of the manner in which the Product is to be stored and the time after which the Product is liable to deteriorate.

4.3 Unsafe Goods - Countrywide shall have the right to refuse to accept, handle, or store Products that Countrywide reasonably determines are not safe for storage or handling.

ARTICLE 5 INDEMNIFICATION AND INSURANCE

5.1 Mutual Indemnification - Each party (an "indemnifying party") agrees to indemnify and hold harmless the other party, its officers, directors, stockholders, employees and agents, from and against any and all losses, damages, claims, liabilities, causes of action, costs and expenses, including but not limited to reasonable legal fees, for injury to or death of any

person or loss or damage to or loss of use of property arising out of the indemnifying party's negligence or other fault or any material breach by the indemnifying party of its obligations under this Agreement. Countrywide's indemnification obligations shall also be the liability and obligation of Tibbett & Britten, as set forth in a written undertaking executed by Tibbett & Britten.

5.2 Limitations on Liability - In no event shall either party be liable to the other party under the foregoing indemnities or for any breach or alleged breach of this Agreement to the extent resulting from any of the following:

(a) losses for which the other party is entitled to recover under the policy or policies of insurance referred to in Sections 5.6 or 5.7 (or would be entitled to recover, but for a failure to carry and maintain insurance in accordance with Section 5.6 or 5.7);

(b) force majeure (as defined in Article 6); or

(c) lost profits, indirect, incidental, or consequential losses or damages.

The foregoing shall not affect or limit Countrywide's rights to recover accrued and unpaid Management Fees, subject to Furr's right of setoff or recoupment, if any. In addition, Countrywide shall not be liable to Furr's for loss caused by any of the factors set forth on Schedule G (A), and Furr's shall not be liable to Countrywide for loss caused by any of the factors set forth on Schedule G (B). If there is a material breach of this Agreement and such breach cannot be cured or otherwise resolved by agreement of the parties, the non-breaching party's sole remedy with respect to such material breach shall be to terminate this Agreement and seek indemnification from the appropriate party.

5.3 Product Liability - Furr's agrees to indemnify and hold harmless Countrywide, its officers, directors, stockholders, employees and agents, from and against any and all losses, damages, claims, liabilities, causes of action, costs and expenses, including but not limited to reasonable legal fees, arising out of or relating to:

(a) product liability claims or the handling, possession, storage, use or any other dealing by any person of any Products, or any non-compliance by Furr's with any applicable law relating to the Products or the packaging, handling, storage or use of any of the Products, but excluding any claims to the extent they arise from the negligence or willful misconduct of Countrywide or its agents, servants, or employees; or

(b) any claims or proceedings brought or commenced by a third party as a result of Furr's entering into this Agreement or the performance of Furr's obligations under this Agreement.

5.5 Indemnification Procedure -

(a) In the event any claim or any suit is filed against either party for which the other party may be required to provide indemnification, the party against whom the claim is so asserted shall promptly notify the indemnifying party (the "Indemnification Notice") of such claim or suit as promptly as practicable but in no event later than 15 days after its receipt (provided that failure to so notify the indemnifying party shall not limit its obligations to indemnify except to the extent it is materially prejudiced by such failure), whereupon the indemnifying party may, by written notice to the indemnified party, undertake the defense of such suit or the settlement of any such claim, with counsel reasonably satisfactory to the indemnified party, at the sole cost and expense of the indemnifying party.

(b) In the event that the indemnifying party, within a reasonable time after receipt of an Indemnification Notice, does not so elect to defend such claim, the indemnified party will have the right (upon further notice to the indemnifying party) to undertake the defense, compromise or settlement of such claim for the account of the indemnifying party, subject to the right of the indemnifying party to assume the defense of such claim pursuant to Subsection 5.5(a) within a reasonable time prior to settlement, compromise or final determination thereof, provided that the indemnifying party reimburses in full all costs of the indemnified party (including reasonable attorneys' fees and disbursements) incurred by it in connection with such defense prior to such assumption.

(c) Anything in this Section 5.5 to the contrary notwithstanding, (i) if the indemnified party believes there is a reasonable probability that a claim may materially and adversely affect the indemnified party, the indemnified party shall have the right to participate in the defense, compromise or settlement of such claim, provided that the indemnifying party shall not be liable for expenses of separate counsel of the indemnified party engaged for such purpose, and (ii) no person (other than the indemnified party) who has undertaken to defend a claim under this Section 5.4 shall, without the written consent of the indemnified party, settle or compromise any claim or consent to entry of any judgment which does not include as an unconditional term thereof the release by the claimant or the plaintiff of the indemnified party from all liability arising from events which allegedly give rise to such claim.

(d) The remedies provided to an indemnified party in this Agreement shall be cumulative and shall not preclude an indemnified party from asserting any other rights or seeking any other remedies against an indemnifying party or its successors or assigns.

5.6 Insurance by Countrywide - During the term of this Agreement, Countrywide shall carry and maintain the following policies of insurance issued by recognized, reputable insurers in forms satisfactory to Furr's acting reasonably, and naming Furr's as an additional insured as its interest may appear where applicable and including cross waivers of any right of subrogation:

(a) insurance covering the Products against loss or damage arising from the negligence of Countrywide or its employees while the Products are in Countrywide's care and control;

(b) "all risks" broad form insurance for the Vehicle Maintenance Area and the Transportation Assets, all on a full replacement cost new basis without depreciation;

(c) adequate comprehensive public liability insurance, having regard to the nature of Countrywide's business and the scope of the Transportation Services;

(d) adequate workers' compensation coverage for all eligible employees and adequate temporary workers' coverage;

(e) adequate automobile liability insurance for vehicles owned and/or leased in the name of Countrywide;

(f) adequate Motor Truck Cargo Legal Liability insurance; and

(g) such insurance policies shall provide (unless prohibited by applicable statute) that written notice of cancellation shall be given to Furr's at least thirty (30) days prior to such cancellation.

The premiums (net of rebates) for such policies shall be included in the Approved Budget.

5.7 Insurance by Furr's - During the term of this Agreement (and, in the case of product liability insurance, for a period of five years after termination or expiration of this Agreement) Furr's shall carry and maintain the following policies of insurance issued by recognized, reputable insurers, in forms satisfactory to Countrywide acting reasonably, and naming Countrywide as an additional insured as its interest may appear where applicable and including cross waivers of any right of subrogation:

(a) insurance covering the Products against loss or damage on a full replacement cost basis from all risks other than those for which Countrywide is expressly liable under this Agreement;

(b) adequate (in view of the business being conducted) comprehensive public and product liability insurance, having regard to the nature of Furr's business, providing for a limit of liability of not less than \$1.0 million per occurrence; and

(c) adequate business interruption insurance, having regard to the nature of Furr's business.

5.8 Amendments to Insurance Coverage Obligations - The parties may, by written agreement, amend the insurance coverage requirements to provide a more cost-effective structure for the insurance coverage obligations of the parties.

5.9 Proof of Insurance - Each party shall provide the other party with certificates of insurance or other proof of insurance reasonably satisfactory to the requesting party evidencing the coverage and other matters referred to in Sections 5.6 and 5.7 above.

ARTICLE 6 FORCE MAJEURE

6.1 Force Majeure - The parties will not be liable, in whole or in part, to perform or comply with any of their respective obligations under this Agreement if unable to do so due to circumstances beyond their reasonable control. In the case of Countrywide, such circumstances would include, but not be limited to overstocking of the warehouse (to the extent such overstock prevents Countrywide from performing its obligations hereunder), and material variance in actual volumes of Products to be shipped as compared to forecasts provided by Furr's. The party suffering the force majeure shall forthwith give notice in writing to the other party of such fact. Upon receipt of such notice by the other party representatives of Countrywide and Furr's shall meet to establish plans and procedures to overcome or mitigate the effects of the force majeure, and the party suffering the force majeure shall use all reasonable efforts to minimize any adverse effects on the other party. Furr's shall pay all reasonable costs and expenses incurred by Countrywide in overcoming or mitigating the effects of the force majeure, and shall continue to pay all Costs (except for Management Fees) in accordance with this Agreement during the pendency of the force majeure. If the force majeure causes a party to be unable to render substantial performance of its obligations under this Agreement for a period of ten days after notice thereof, which inability causes material damages to the other party, and the other party can either render such performance itself or obtain such performance from a third party, then the other party may do so until the party suffering the force majeure can resume performance.

ARTICLE 7 EMPLOYEES

7.1 Employees of Countrywide - During the term of this Agreement, all personnel employed in connection with the provision of the Transportation Services shall remain employees

of Countrywide and not of Furr's. Furr's shall have no control or right to exercise any control whatsoever over the employees of Countrywide in the performance of Countrywide's obligations under this Agreement or any other agreement entered into between Furr's and Countrywide and Furr's shall not select, supervise, direct or in any other way control or seek to control the employees of Countrywide.

ARTICLE 8 TRANSPORTATION ASSETS; MAINTENANCE

8.1 Transportation Assets - Countrywide shall lease Transportation Assets, and shall sublease from Furr's certain other Transportation Assets, all as set forth on Schedule B. Countrywide's provision of the Transportation Services. All leases of Transportation Assets shall be included in the annual Approved Budgets. All leases shall be nonrecourse to Countrywide and, if required by the lessor, guaranteed by Furr's.

8.2 Acquisition of Additional Transportation Assets - Countrywide shall not, without the prior approval of Furr's, such approval not to be unreasonably withheld or delayed:

(a) purchase or otherwise acquire any Transportation Asset having a value greater than \$5,000; or

(b) enter into any equipment lease, contract or other obligation in connection with the provision of Transportation Services to Furr's, having a term in excess of three months and providing for payments in excess of \$5,000 in the aggregate.

8.3 Maintenance of Transportation Assets - Countrywide shall maintain the Transportation Assets in good repair, mechanical condition, and appearance (which includes routine inside and outside trailer washing), and furnish all tires and other parts, supplies, and equipment necessary or required for the safe and efficient operation and maintenance of the Transportation Assets. All maintenance costs shall be included within the Approved Budgets.

8.4 Vehicle Maintenance Facility - Countrywide shall use the Vehicle Maintenance Facility to maintain the Transportation Assets. Countrywide shall pay all costs associated with operating and maintaining the Vehicle Maintenance Facility, which costs shall be part of the annual Approved Budgets.

ARTICLE 9 TERM AND TERMINATION

9.1 Term - This Agreement shall be effective as of and from the Commencement Date and shall terminate on the Termination Date unless earlier terminated in accordance with the provisions of this Article.

9.2 Mutual Termination Rights - Either party shall have the right to terminate this Agreement:

(a) Nonpayment. At any time, if any substantial amount (i.e. more than \$10,000) owing by one party to another under this Agreement remains unpaid for more than 14 days after the date due, provided that the party to whom the money is owed provides seven days' prior written notice of its intention to terminate this Agreement and such amount remains unpaid upon the expiration of the seven day notice period, and provided further that this clause does not apply to a bona fide dispute between the parties regarding any amount Furr's may owe Countrywide for Incentive Management Fees:

(b) Insolvency. Immediately upon written notice to a party if such party becomes insolvent, becomes unable to pay its debts as they mature, is the subject of a petition in bankruptcy whether voluntary or involuntary (and in the case of any involuntary petition in bankruptcy, the petition is not dismissed within 60 days after the filing thereof), makes an assignment for the benefit of its creditors, or is dissolved or liquidated except in connection with a bona fide corporate reorganization pursuant to which all of its obligations under this Agreement are assumed by an affiliate:

(c) Material Breach. If, at any time during the term of this Agreement, the other party has committed a material breach of this Agreement, and such breach has not been cured within 45 days after receipt of written notice detailing the nature of such breach: provided, however, that if the breach cannot be cured within said 45 day period, the breaching party shall only be required during such period to commence with due diligence and dispatch the curing of such breach and to prosecute or complete with due diligence and dispatch the curing of such breach. The failure to so cure or commence such cure to be referred to as a "Default." During the period of seven days following receipt of the notice of breach, representatives of Countrywide and Furr's shall meet and discuss the breach: or

(d) Change of Control. Either party ("Continuing Party") shall have the right to terminate this Agreement upon 90 days' written notice to the other (the "Other Party") if (i) the Other Party is subject to a Change of Control, as such term is hereinafter defined, and (ii) the Continuing Party, acting reasonably having regard to the financial viability and the nature of the operations of the entity which is assuming control of the Other Party ("Controlling Entity") determines that the Controlling Entity is not acceptable to it, and provided that it exercises such right of termination within 30 days after it is advised of, or otherwise learns of, the Change of Control. Provided it is legally entitled to do so, each party agrees to provide written notice to the other of any Change of Control prior to or forthwith after such Change of Control occurs, subject, if such notices is provided prior to such Change in Control, to the other party keeping such information strictly confidential, and that information shall not be released without the notifying party's consent, which consent shall not be unreasonably withheld. For purposes of this Agreement, "Change of Control" means:

(i) in the case of Countrywide, that Tibbett & Britten Group plc ("TBG") shall become a subsidiary of any other body corporate otherwise than as part of a scheme of reconstruction. For the purposes of this sub-clause TBG shall be deemed to have become a subsidiary of another body corporate if as a result of actions by persons acting pursuant to an agreement to which Sections 204 and 205 of the Companies Act 1985 (U.K.) apply TBG would have become a subsidiary of such persons if such persons had together constituted a single body corporate; and

(ii) in the case of Furr's, the legal and beneficial owners of 50% or more of the voting securities of Furr's on the date hereof no longer own at least 50% of such voting securities.

(e) After Second Anniversary of Commencement Date. On the second anniversary of the Commencement Date, either party may terminate the Agreement, with or without cause, for any reason whatsoever. A party wishing to terminate the Agreement pursuant to this subsection shall give the other party written notice thereof at least 120 days before the second anniversary of the Commencement Date.

(f) Termination Option Upon Termination of the Warehousing Agreement. Either party may terminate the Agreement, with or without cause, for any reason whatsoever, if the Warehousing Agreement is validly terminated by either party pursuant to Article 9 of the Warehousing Agreement.

9.3 Furr's Termination Right - Furr's shall have the right to terminate this Agreement as follows:

(a) Failure to Comply with Service Specifications or Key Performance Indicators. Upon 60 days' prior written notice to Countrywide (to be given after the notice of breach required in Section 9.2(c), and Countrywide's failure to timely cure such breach), if Countrywide does not materially comply with the Service Specifications and/or Key Performance Indicators so as to constitute a material breach under Section 9.2 (c), such termination right to become effective after such breach has become a Default. With respect to Key Performance Indicators, "material" noncompliance means Countrywide fails to achieve the following average standards during any Quarter:

[to be determined by mutual agreement of the parties on or before May 30, 1999]

The foregoing notwithstanding, Furr's shall not have the right to terminate this Agreement because of Countrywide's failure to materially comply with a Key Performance Indicator related specifically to Freighthaul revenue.

(b) Net Cost Overrun in 1999 Contract Year. Upon 90 days' prior written notice to Countrywide, if the actual reimbursable Costs of providing the Transportation Services exceed the annual Flex Budget reimbursable Costs by more than 20% in the 1999 Contract Year, provided however, that if there is such a cost overrun and if Furr's wishes to terminate the Agreement, (A) Furr's must give Countrywide notice in writing within three months after the determination of such a cost overrun has been made; and (B) Countrywide shall have the option, within one month of receipt of such notice, to keep the Agreement in force by paying to Furr's an amount sufficient to reduce the cost overrun to no more than 10%;

(c) Net Cost Overruns in Subsequent Contract Years. Upon 90 days' prior written notice to Countrywide, if the actual reimbursable Costs of providing the Transportation Services exceed the annual Flex Budget reimbursable Costs by more than 10% in the any Contract Year after 1999, provided however, that if there is such a cost overrun and if Furr's wishes to terminate the Agreement, (A) Furr's must give Countrywide notice in writing within three months after the determination of such a cost overrun has been made; and (B) Countrywide shall have the option, within one month of receipt of such notice, to keep the Agreement in force by paying to Furr's an amount sufficient to reduce the cost overrun to no more than 5%;

(d) Termination Option After December 31, 2003. Upon 90 days' prior written notice to Countrywide, Furr's may terminate the Agreement as of December 31, 2003, with or without cause, for any reason whatsoever.

(e) Termination Option After December 31, 2005. Upon 90 days' prior written notice to Countrywide, Furr's may terminate the Agreement as of December 31, 2005, with or without cause, for any reason whatsoever.

9.4 Procedures on Termination -

(a) If the Agreement has been terminated for any reason other than Countrywide's termination pursuant to Section 9.2 (a) or either party's termination pursuant to Section 9.2 (e), at Furr's option Countrywide shall continue to provide the Transportation Services for an additional 90-day transition period, starting from the date of termination (the "Transition Period"). During the Transition Period, Countrywide shall continue to provide the Transportation Services in accordance with this Agreement, and Furr's shall continue to make payments pursuant to the terms of this Agreement and otherwise comply with the Agreement.

(b) At the end of the Transition Period or, if there is no Transition Period then on the date of termination, the following procedures shall apply:

(i) Furr's shall have the option, exercisable in writing within 14 days after the Agreement expires or terminates, to acquire the Transportation Assets (if owned by Countrywide) at Countrywide's net book value:

(ii) Furr's shall have the option, exercisable in writing within 14 days after the Agreement expires or terminates, to assume any and all leases of Transportation Assets;

(iii) Furr's may hire any Countrywide Employees, subject to the restriction contained in Section 13.7 below, who prior to termination worked at the Vehicle Maintenance Area or otherwise assisted Countrywide in providing the Transportation Services:

(iv) Furr's shall indemnify, reimburse, and hold Countrywide harmless for all costs incurred in connection with terminating the Agreement, including without limitation (1) any loss on disposal of Transportation Assets; (2) any loss associated with termination of the Transportation Asset leases; and (3), and the costs associated with the termination of employment obligations, except for relocation expenses of relocated employees. Any insurance proceeds received by Countrywide in respect of claims for which Countrywide has received indemnification shall be reimbursed to Furr's; and

(v) Furr's shall promptly pay Countrywide all sums payable to it through the date of expiration or termination, including any amounts advanced by Countrywide that have not been fully amortized and repaid by Furr's as of the expiration or termination date.

ARTICLE 10 CONFIDENTIALITY

10.1 **Confidentiality** - Each party shall not, during the term of this Agreement or at any time thereafter, transmit Confidential Information of the other party to any third person either in whole or in part. Each party shall take all reasonable precautions to safeguard the Confidential Information of the other party from unauthorized disclosure and, at a minimum, shall afford the Confidential Information of the other party such precautions and safeguards as it affords to its own confidential information of a similar nature. "Confidential Information" for purposes of this Agreement shall mean all non-public, confidential or proprietary information of either party and its clients and customers, including but not limited to information regarding costing, inventory systems, technology, formulations, transportation, warehouse, administrative and other technical and economic data and information, received by the other party in the course of the negotiation of, or performance of its obligations under, this Agreement. The above restrictions shall not apply to the extent that Confidential Information comes into the public domain through no fault of the other party, is received by the other party from a third party having a bona fide right to disclose such information, or disclosure is required by law.

10.2 **Public Notices** - Neither party shall make any press release or public announcement regarding this Agreement or otherwise publicly disclose any of the terms of this Agreement without the prior written consent of the other party, except where required to do so by law or by the applicable regulations or policies of any State or Federal or other regulatory agency of competent jurisdiction or any stock exchange in circumstances where prior consultation with the other party is not practicable.

10.3 **Requirement to Disclose** - Wherever in this Agreement disclosure is permitted if "required by law."

(a) the term "law" shall have the meaning set forth in Schedule A; and

(b) such disclosure shall be permitted only if, as promptly as practicable after determining that disclosure is required or after receipt of any such order, demand or subpoena, the party intending to make such disclosure shall notify the other party of such requirement and the scope of the proposed disclosure and shall simultaneously deliver to the other party a copy of such order, demand or subpoena or, if there is none, a written opinion of its counsel describing the legal basis upon which such disclosure is required. The party intending to make such disclosure shall cooperate with all reasonable requests of the other party for assistance in preventing or limiting such disclosure.

ARTICLE 11 DISPUTE RESOLUTION

11.1 Negotiation - If a dispute arises under this Agreement that cannot be resolved by the personnel directly involved, either party may give written notice to the other designating an executive officer with appropriate authority to be its representative in negotiations relating to the dispute. Such executive officer shall be an individual who has no direct operational responsibility for the matters contemplated by this Agreement. Upon receipt of this notice, the other party shall, within five business days, give notice to the first party, designating an executive officer with similar authority and without such operational responsibility to be its representative. The designated executive officers (the "Representatives") shall, promptly following whatever investigation each deems appropriate but in no event later than five business days after delivery of the notice by the second party, enter into discussions concerning the dispute. The parties shall arrange for a meeting at a time and place mutually acceptable to both parties. If the Representatives are unable to resolve the dispute within 10 business days after the first meeting, the dispute shall then be referred to the President of Countrywide and the President of Furr's who, acting in good faith and using reasonable efforts, shall work toward a reasonable and equitable resolution of the dispute.

11.2 Appointment of KOM to Resolve Arbitrable Disputes - If (i) the respective Presidents of Countrywide and Furr's are unable to resolve the dispute within 10 business days from the time the dispute was first referred to them, and the dispute is an Arbitrable Dispute, the parties shall refer the matter to KOM, which will render a final and binding determination. Each party shall submit a proposal to KOM for resolution of the dispute and KOM shall choose one of the proposals, or a combination of the proposals. If KOM is unavailable, the parties shall agree on a mutually acceptable method of mediation or arbitration to resolve the dispute. The parties shall cooperate with any person appointed pursuant to this Article 11 and shall provide him with such information and other assistance as he shall require and his costs shall be paid by such party as he shall determine. If either party reasonably asserts that KOM has a conflict of interest sufficient to disqualify KOM from acting as an arbitrator, the parties will agree on a new arbitrator or, if they are unable to agree, shall each select an arbitrator, and the two selected arbitrators shall select the replacement arbitrator. Each party acknowledges that as of the Commencement Date, it is not aware of any dealings the other party has had with KOM that would be sufficient to create a disqualifying conflict of interest.

11.3 Resolution of Other Disputes - If the dispute is not an Arbitrable Dispute, then the parties may either agree to submit the dispute to KOM or some other party for resolution, agree upon binding arbitration through the American Arbitration Association, or seek a resolution through the courts.

ARTICLE 12 GENERAL REPRESENTATIONS AND WARRANTIES

12.1 By Furr's - Furr's represents and warrants to Countrywide as follows:

(a) Furr's is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement. The execution and delivery of this Agreement and the performance of Furr's obligations under this Agreement have been duly authorized by all necessary corporate action on the part of Furr's.

(b) Furr's is not a party to, bound or affected by, or subject to, any indenture, mortgage, lease, agreement, collective agreement, obligation, instrument, charter or by-law provision, statute, regulation, order, judgment, decree, license, permit or law which would be violated, contravened or breached as a result of the execution and delivery of this Agreement, or the performance by Furr's of any of its obligations under this Agreement.

12.2 By Countrywide - Countrywide represents and warrants to Furr's as follows:

(a) Countrywide is a corporation duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations under this Agreement. The execution and delivery of this Agreement and the performance of Countrywide's obligations under this Agreement have been duly authorized by all necessary corporate action on the part of Countrywide.

(b) Countrywide is not a party to, bound or affected by, or subject to, any indenture, mortgage, lease, agreement, collective agreement, obligation, instrument, charter or by-law provision, statute, regulation, order, judgment, decree, license, permit or law which would be violated, contravened or breached as a result of the execution and delivery of this Agreement, or the performance by Countrywide of any of its obligations under this Agreement.

ARTICLE 13 GENERAL

13.1 Further Assurances - Each of Countrywide and Furr's shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

13.2 Benefit of the Agreement - This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of Countrywide and Furr's.

13.3 Continued Provisions - Notwithstanding any expiration or termination of this Agreement, (i) the obligation of Furr's to pay accrued and unpaid Management Fees; (ii) Sections 5.1, 5.2, 5.3, 5.4 and 5.5 (all with regard to any occurrence prior to the date of expiration or termination of this Agreement), and (iii) Section 9.4 and Articles 10, 11, and 12, shall continue in full force and effect.

13.4 Entire Agreement - This Agreement constitutes the entire agreement between the parties with respect to its subject matter and cancels and supersedes any prior understandings and agreements between the parties with respect to such subject matter. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement.

13.5 Amendments and Waiver - No modification of or amendment to this Agreement shall be valid or binding unless in writing and duly executed by both of the parties and no waiver

of any breach of any term or provision of this Agreement shall be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, shall be limited to the specific breach waived.

13.6 **Assignment** - Except as provided below this Agreement may not be assigned, either directly or by operation of law, by either party without the written consent of the other party, such consent not to be unreasonably withheld. This Agreement may be so assigned by either party without the consent of the other party to an affiliate of the assignor, provided that the affiliate enters into a written agreement with the other party to be bound by the provisions of this Agreement in all respects and to the same extent as the assignor is bound and provided that the assignor shall continue to be bound by all obligations under this Agreement as if such assignment had not occurred and shall perform such obligations to the extent that the affiliate fails to do so.

13.7 **Non-Solicitation** - For the later of (i) one year from the date of execution by the parties of the letter of intent which provided the basis for the negotiation and execution of this Agreement; or (ii) twelve months following the expiration or termination of this Agreement for any reason whatsoever, Furr's shall not, and shall not permit any of its affiliates to, without the prior written consent of Countrywide, directly or indirectly hire, solicit, induce or encourage any person who is a managerial employee or agent employed or engaged by Countrywide or any of its affiliates within one year prior to such solicitation, to leave or otherwise cease being employed or engaged by Countrywide or any of its affiliates; provided, however, that the foregoing shall not apply to Countrywide Employees who worked for U.S.F. Logistics or its affiliates before being hired by Countrywide.

13.8 **Legal Relationship** - The legal relationship of Countrywide and Furr's to each other shall be that of independent contractors, and neither party shall be the agent or legal representative of the other for any purpose. Neither party shall have the right or authority to bind or obligate the other to any third party for any purpose whatsoever.

13.9 **Notices** - Any demand, notice or other communication to be given in connection with this Agreement shall be in writing and shall be given by personal delivery, by overnight courier, by registered mail or by electronic means of communication addressed to the recipient at the address shown on the first page of this Agreement or to such other address, individual or electronic communication number as may be designated by notice given by either party to the other. Any demand, notice or other communication shall be conclusively deemed to have been given (i) on the day of actual delivery if given by personal delivery; (ii) on the next business day if given by overnight courier; (iii) on the third business day following deposit in the mail if given by registered mail; and (iv) on the day of transmittal if given by electronic communication during the normal business hours of the recipient and on the next following business day if not given during such hours on any day.

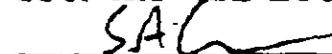
IN WITNESS WHEREOF the parties have executed this Agreement.

FURR'S SUPERMARKETS, INC.



By: Gene W. Denison
Title: Senior Vice President/CAO

COUNTRYWIDE LOGISTICS INC.



By: Steven Crowther
Title: President

SCHEDULE A
CERTAIN DEFINITIONS

"Agreement" means this Transportation Services Agreement.

"Approved Budget" has the meaning set forth in Schedule D of this Agreement.

"Arbitrable Disputes" means one of the following disputes between Countrywide and Furr's under this Agreement: (a) inability to agree upon an Annual Transportation Budget; (b) inability to agree on the Key Performance Indicators and/or Service Specifications; or (c) dispute over whether Countrywide has earned its Incentive Management Fee.

"Backhaul" means any Products or other goods picked up and hauled by Countrywide, other than Products hauled for Furr's under this Agreement.

"Base Management Fee" has the meaning set forth in Schedule F of this Agreement.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 et seq).

"Change of Control" has the meaning set out in Section 9.6 of this Agreement.

"Commencement Date" means April 25, 1999.

"Contract Year" means a calendar year commencing on January 1 (unless Countrywide and Furr's otherwise agree), provided that the initial Contract Year of this Agreement shall commence on the Commencement Date and end on December 31, 1999, and the final Contract Year of this Agreement shall end on the date this Agreement expires or is terminated pursuant to Article 9.

"Cost Overruns" has the meaning set forth in Section 9.3(d) of this Agreement.

"Contract Motor Carrier" means contract transportation provided under this agreement pursuant to U.S.C. §13102(4)(B) and 14101(b) and, as necessary, any applicable state law.

"Costs" includes the following:

(a) depreciation and amortization on all Transportation Assets owned by Countrywide, calculated on the basis of the historical cost of each item on a straight line basis over the expected useful life of the item, using Countrywide's depreciation policies in accordance with generally accepted accounting principles, and charged from the Commencement Date or, if the item was purchased after that date, from the first day of the Fiscal Accounting Period next following the date of acquisition;

(b) financing charges equal to interest, calculated monthly on the depreciated net book value of the Transportation Assets (as defined below) owned by Countrywide at the commencement of each Fiscal Accounting Period, at the rate per annum equal to the Prime Rate for such month plus 1.0%;

(c) all equipment rentals and all charges under any leases of equipment assumed by Countrywide or entered into by Countrywide in accordance with the terms of this Agreement (including without limitation leases which constitute capital leases under generally accepted accounting principles) and relating to the provision of the Transportation Services;

(d) except as otherwise provided in this Agreement, all rent, rental subsidies, additional rent, utilities, property and business taxes, maintenance and other charges, and other costs, liabilities and obligations relating to any leases or subleases of the Vehicle Maintenance Area;

(e) all transportation and freight costs, including fuel, maintenance and payments made to common carriers for freight services, relating to the provision of the Transportation Services;

(f) all premiums for the policies of insurance referred to in Section 5.5;

(g) all direct and indirect labor costs relating to the provision of the Transportation Services, including without limitation salaries, wages, and normal and customary benefits relating to the remuneration of Countrywide Employees, and payments required be made to any normal and customary pension or other benefit plan or arrangement in respect of Countrywide Employees;

(h) all pay in lieu of notice, termination and severance payments and like amounts, and all related costs and expenses, relating to the termination of employment of any one or more Countrywide Employees, including without limitation any and all reasonable payments made by or on behalf of Countrywide for vested pension or other accrued benefits;

(i) a share of the following costs incurred by Countrywide with respect to the information processing and related communications devices, equipment, systems, information, data, or software, which are or shall be owned by Countrywide, pro-rated to the extent used in connection with the Transportation Services (collectively "Systems"):

(i) all reasonable costs of testing for and correcting or eliminating any computer viruses, worms or other instructions, codes, information, programs or materials which improperly, wrongfully or otherwise interfere with or could interfere with the Systems and/or performance under this Agreement (collectively "Interference Devices"), unless such Interference Devices and/or costs incurred therefrom result from Countrywide's failure to properly protect the Systems or other computer hardware or software used by Countrywide;

(ii) all reasonable costs associated with making the Systems Year 2000 Compliant (as such term is defined below) and testing for such compliance; and

(iii) all reasonable costs, expenses, liabilities, losses, or damages incurred or suffered by Countrywide or any third party resulting from or associated with any Systems provided by or at the direction of Furr's to Countrywide, in any form, not being Year 2000 Compliant. The term "Year 2000 Compliant" shall mean any function, process, device or item (including, without limitation, Systems), which, regardless of the particular date, year, century or other chronological variable: (a) can accurately process date information (e.g., accept, store, sort and sequence data input, provide data output and perform calculations and comparisons on dates and portions of dates, including without limitation dates involving leap years); (b) can function without interruption due to a change in date (including, without limitation, a change to a date subsequent to December 31, 1999), ensuring accurately that any results, data or information processed, generated or transmitted in connection therewith, shall be correct, valid and not adversely affected and, if applicable, (c) shall include date data century and millennium recognition, calculations which accommodate same century (and millennium) and multi-century (and millennium) date values and formulae, as well as date data interfaces (to application and operating system software, as applicable) reflecting the correct date, year, century and millennium; and

(j) all other costs, of whatever nature, properly incurred by Countrywide in connection with the provision of the *Transportation Services* in accordance with the terms of this Agreement. Countrywide's liability to Furr's under Section 5.1 of this Agreement shall not be a "Cost" within the meaning of this definition.

"Fiscal Accounting Period" means the consecutive periods of approximately four weeks identified in Schedule F or, if no such periods are identified, means a calendar month.

"Flex Budget" means the budget resulting from the amendment of the Approved Budget for changes in any factors outside of Countrywide's reasonable control.

"Freighthaul" means any Products or other goods picked up at the manufacturer's assigned location and hauled by a common carrier other than Countrywide.

"Governmental Authority" means the United States of America, any state thereof, and any political subdivision of the foregoing, including but not limited to any federal, state, or local legislature, court, department, agency, or bureau.

"Incentive Management Fee" has the meaning set forth in Schedule F of this Agreement.

"Indemnification Notice" has the meaning set forth in Section 5.4 of this Agreement.

"KOM" means KOM International, a corporation with its headquarters in Montreal, Canada.

"Key Performance Indicators" has the meaning set forth in Schedule C of this Agreement.

"Law" means any law, statute, judicial decision, ordinance, decree, requirement, order, judgment, rule, or regulation of, including the terms of any license or permit issued by, any Governmental Authority.

"Management Fees" means the Base Management Fee and the Incentive Management Fee.

"Prime Rate", means, in respect of any calendar month, means the rate established by Chase Manhattan Bank at the commencement of the calendar month as the reference rate it uses for determining interest rates on United States dollar loans to its customers in the United States and designated as the prime rate.

"Products" means temperature controlled and ambient grocery products and general merchandise, health and beauty care products, which are to be transported from the Warehouse to the Stores pursuant to this Agreement.

"Representatives" has the meaning set forth in Section 11.1 of this Agreement.

"Quarter" means a period equal to three of Furr's Fiscal Accounting Periods.

"Countrywide Employees" means employees of Countrywide engaged principally in the provision of the *Transportation Services* to Furr's.

"Service Specifications" has the meaning set forth in Schedule C of this Agreement.

"STB" means the Surface Transportation Board that was created by Congress pursuant to the Interstate Commerce Commission and Transportation Act and has assumed certain regulatory jurisdiction previously vested in the Interstate Commerce Commission.

"Stores" means Furr's retail grocery stores, as the same may be owned or leased by Furr's from time to time.

"Tariff/Schedule/Service Guide or Similar Document" means any form of publication maintained by Countrywide setting forth rules and provisions related to Countrywide's services as a common carrier. Unless otherwise specified in this Agreement, any such document, and the terms thereof, shall not apply to the Transportation Services.

"Tibbett & Britten" means Tibbett & Britten Group North America, Inc. a Delaware corporation.

"TBG" has the meaning set forth in Section 9.2(d) of this Agreement.

"Termination Date" means December 31, 2008.

"Transition Period" has the meaning set forth in Section 9.4 (a) of this Agreement.

"Transportation Assets" means the tractors, trailers, and other vehicles, equipment and property listed in Schedule B, together with any additional tractors, trailers, and other vehicles, equipment and property acquired by Countrywide in accordance with the terms of this Agreement and relating to the provision of Transportation Services.

"Transportation Services" has the meaning set forth in Article 2 of this Agreement.

"U.S. DOT" means the United States Department of Transportation.

"Vehicle Maintenance Facility" means that portion of the real property subleased by Countrywide from Furr's pursuant to the Warehousing Agreement that is currently used to maintain the trucks and other vehicles used to provide transportation services to Furr's.

"Warehouse" means the grocery warehouse in El Paso, Texas that Countrywide leases from and operates for Furr's pursuant to the Warehousing Agreement.

"Warehousing Agreement" has the meaning set forth in Recital B of this Agreement.

SCHEDULE B

1. Idealease Equipment. Countrywide shall lease the tractors, trailers, and related equipment from Idealease that were being leased by U.S.F. Logistics from Idealease, in connection with the provision of transportation services to Furr's prior to the Effective Date of this Agreement. Attached hereto is the original list of such equipment, dated June 28, 1991. There have been additions to and deletions from the attached list since June 28, 1991.

2. Subleased Assets. As of the Effective Date of this Agreement, the parties do not contemplate that Furr's will sublease any transportation equipment to Countrywide.

3. Other Transportation Assets. Countrywide may from time to time lease such other transportation equipment, upon such terms and conditions, as may be reasonably agreed upon by Countrywide and Furr's after the Effective Date.



Schedule "C" ARE 1A of 13
SCHEDULE "A" TO VEHICLE LEASE AND SERVICE AGREEMENT

Contract No. 257
 Page 1 of 1
 MASTERLEASE DATED JUNE 26, 199

Ideallease Services, Inc.

and Customer TRT DEDICATED SERVICES, INC.

28144 INDUSTRIAL AVENUE #116, BARRINGTON, IL 60010
 2880 EARTH LAKE DRIVE, LONG GROVE, IL 60047

VEHICLE NO.	DATE OF DELIVERY	LEASE TERM (months)	VEHICLE DESCRIPTION				MILEAGE Allowance or GDMV	LICENSED WEIGHT	ORIGINAL VALUE	Depreciation Credit		Title Lease Charge		Mileage Charge Per Mile	Mileage
			YEAR	MAKE	MODEL & TYPE	SERIAL NUMBER				Per month	Per lease	Per month	Per lease		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	
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SCHEDULE "A" ~~Schedule "C"~~ ~~LEASE AND SERVICE AGREEMENT~~

Idelease Services, Inc. and Customer FNT DEDICATED SERVICES, INC.
28144 INDUSTRIAL AVENUE #116, BARRINGTON, IL 60010
2000 SALEM LAKE DRIVE, LONG GROVE, IL 60047

(1)	DATE OF DELIVERY	LEASE TERM (MONTHS)	VEHICLE DESCRIPTION				MILEAGE PER MONTH OR QUARTER	LOGGED VEHICLE MILEAGE	ORIGINAL VALUE	Depreciation		Change in Value	Residual Value
			YEAR	MAKE	MODEL & TYPE	SERIAL NUMBER				Per Month	Per Quarter		
		24			TRACT		80,000	26,647.50	564.46	1109.00		N/A	
		24			TRACT		80,000	26,647.50	564.46	1109.00		N/A	
		24			TRACT		80,000	26,647.50	564.46	1109.00		N/A	
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		24			TRACT		80,000	26,647.50	564.46	1109.00		N/A	

* MILEAGE CHARGES ARE STEP-RATED AS FOLLOWS:

YEAR 1 : .067
YEAR 2 : .087

AUTHORIZED REPRESENTATION
VEHICLES SHOWN ON THIS
SCHEDULE A:
IDEALLEASE - EL PASO, TX



Schedule "C" - APR 5A of 13
 SCHEDULE "A" TO VEHICLE LEASE AND SERVICE AGREEMENT

SCHEDULE NO. 94-117 - 41001-0
 PAGE 1 of 1
 MASTERLEASE DATED JUNE 20, 1991

and Customer 7M7 DEDICATED SERVICES, INC. 1880 SALEY LANE DRIVE, LONG CROFT, TX 75047

28166 INDUSTRIAL AVENUE #110 BARRINGTON, IL 60010

VEHICLE NO. (1)	DATE OF DELIVERY (2)	LEASE TERM (MONTHS) (3)	VEHICLE DESCRIPTION			SERIAL NUMBER (7)	AVG. MONTHLY MILEAGE (8)	LICENSED WEIGH (9)	ORIGINAL VALUE (10)	Depreciation Credit		Net Book Value (12)	Book Value (13)
			YEAR (4)	NAME (5)	MODEL & TYPE (6)					Per Month (11)	Per Mile (11)		
		60	1991	UNREF	UNREF		80,000	80,000	35,997.50	306.78	700.00	4	.65
		60	1991	UNREF	UNREF		80,000	80,000	35,997.50	306.78	700.00	4	.65
		60	1991	UNREF	UNREF		80,000	80,000	35,997.50	306.78	700.00	4	.65
		60	1991	UNREF	UNREF		80,000	80,000	35,997.50	306.78	700.00	4	.65
		60	1991	UNREF	UNREF		80,000	80,000	35,997.50	306.78	700.00	4	.65

MILEAGE CHARGES ARE STEP-RATED AS FOLLOWS:

YEAR 1:	.031
YEAR 2:	.041
YEAR 3:	.051
YEAR 4:	.061
YEAR 5:	.071

AUTHORIZED MEMBERSHIP ON VEHICLES SHOWN ON THIS SCHEDULE A:
 IDEALLEASE - EL PASO, TX

FROM : STEVE CROWTHER

PHONE NO. : 1 609 688 8998

Feb. 12 2001 02:17 PM P13



Schedule "C" Page 9A of 13
SCHEDULE X TO VEHICLE LEASE AND SERVICE AGREEMENT

SCHEDULE NO. 94-J1 1-41001-F
 PAGE 1 of 1
 MASTERLEASE DATED JUNE 28, 1991

Ideal Lease Services, Inc. and Customer **TNT DEDICATED SERVICES, INC.**

28044 INDUSTRIAL AVENUE, #116, BARRINGTON, IL 60010 **1880 SALEM LAKE DRIVE, LONG GROVE, IL 60047**

(1) VEHICLE NO.	(2) DATE OF DELIVERY	(3) LEASE TERM (months)	(4) YEAR	(5) MAKE	(6) MODEL & TYPE	(7) SERIAL NUMBER	(8) UNIT FACTORY MAKE (VIN or ODM)	(9) LICENSED WEIGHT	(10) ORIGINAL VALUE	(11) Depreciation Credit		(12) Fixed Lease Charge		(13) Mileage Charge For Mile	(14) Total Miles Per Hour
										<input type="checkbox"/> For Month					
		60			UNBF		80,000	80,000	35,997.50	333.78	<input type="checkbox"/>	<input type="checkbox"/>	4	4	6.1
		60			URRP		80,000	80,000	35,997.50	333.78	<input type="checkbox"/>	<input type="checkbox"/>	4	4	6.1
		60			UNEF		80,000	80,000	35,997.50	333.78	<input type="checkbox"/>	<input type="checkbox"/>	4	4	6.1
		60			URFP		80,000	80,000	35,997.50	333.78	<input type="checkbox"/>	<input type="checkbox"/>	4	4	6.1
		60			URBP		80,000	80,000	35,997.50	333.78	<input type="checkbox"/>	<input type="checkbox"/>	4	4	6.1

MILEAGE CHARGES ARE STEP-RATED AS FOLLOWS:

YEAR 1:	.031
YEAR 2:	.041
YEAR 3:	.051
YEAR 4:	.061
YEAR 5:	.071

AUTHORIZED SIGNER FOR VEHICLE SHOWN ON THIS SCHEDULE A:
 IDEALLEASE - EL PASO, TX

FROM : STEVE CROLTHUR

PHONE NO. : 1 609 688 0998

Feb. 12 2001 02:19PM P17

Control Schedule - 11/15/73
Investigator Name: J. J. ...

Control Schedule - 11/15/73
Investigator Name: J. J. ...

Control Schedule - 11/15/73
Investigator Name: J. J. ...

Control Schedule - 11/15/73
Investigator Name: J. J. ...

Case No.	Sub Case No.	Area	Location	Quantity	Weight	Value	Notes
40	40
41	41
42	42
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SCHEDULE C
SERVICE SPECIFICATIONS- KEY PERFORMANCE INDICATORS

Service Specifications

[to be determined by mutual agreement of the parties on or before May 30, 1999]

Key Performance Indicators

[to be determined by mutual agreement of the parties on or before May 30, 1999]

SCHEDULE D
BUDGETS AND REMUNERATION

1. **Initial Approved Budget** - Attached as Schedule E is the agreed-upon budget (the "Initial Approved Budget") for the provision of Transportation Services from the Commencement Date through December 31, 1999. Furr's represents and warrants that to the best of its knowledge, information, and belief all information provided to Countrywide in connection with the preparation of the Initial Approved Budget is complete and accurate in all material respects, that such Approved Budget adequately reflect the information provided to Countrywide as well as any assumptions specified by Furr's to be used as a basis for preparing the and Approved Budget.

2. **Flex Budget** - The Approved Budget will be retroactively adjusted each month, resulting in monthly and annual "Flex Budgets," as defined in Schedule A. The intent of the parties is that the Approved Budget shall only be adjusted for factors that are not within Countrywide's control.

3. **Review of Performance** - Within 10 days following the end of each Fiscal Accounting Period Countrywide shall provide to Furr's a report containing a comparison of variances among (i) actual Costs and Management Fees, (ii) budgeted Costs and Management Fees and (iii) Flex Budget Costs and Management Fees for the just completed Fiscal Accounting Period. Within seven days after the receipt of such detailed report, representatives of the parties shall meet to review the report.

4. **Preparation of Subsequent Budgets** - Commencing in 1999, the parties will meet annually, beginning 90 days prior to the end of the Contract Year, to negotiate subsequent Approved Budgets. If a dispute arises in such budget process, the matter will resolved pursuant to Section 11.2. Until a subsequent Approved Budget has been agreed, the most recent Approved Budget will continue in force, and Furr's will make payments to Countrywide pursuant to Paragraph 9 below at an annual rate equal in amount to the greater of the previous Contract Year's (x) Approved Budget, or (y) aggregate actual Costs, as adjusted pursuant to Paragraph 8(c) below.

5. **Monthly Changes to Information** - Prior to each Fiscal Accounting Period Furr's shall advise Countrywide of any anticipated changes to information or assumptions used as the basis for preparation of the Approved Budget.

6. **Change in Contract Year** - If at any time during the term of this Agreement the definition of Contract Year is changed, the following provisions will apply:

(a) if such change results in an extension to the then-current Contract Year, the Approved Budget will be extended accordingly; and

(b) If such change results in an abridgment of the then-current Contract Year, Furr's and Countrywide will negotiate an amended Approved Budget (consistent with the existing Approved Budget) in accordance with this Schedule D for the shortened Contract Year.

7. **Rates for Service**

(a) In addition to any other amounts payable hereunder, as consideration for performing the obligations under this Agreement, Countrywide shall receive from Furr's payment for this Contract Year and for each Contract Year thereafter of an amount equal to the total of (i) the Base Management Fee (calculated in Schedule F) for that Contract Year plus (ii) all Costs for that Contract Year and (iii) except for the 1999 Contract Year, an annual amount of \$60,000 (the "Overhead Contribution") representing the agreed contribution by Furr's to Countrywide's

overhead costs which are not separately identifiable with respect to Countrywide's operating overhead.

(b) In addition to the Base Management Fee, Countrywide shall also receive from Furr's the Incentive Management Fee, as determined in Schedule F.

(c) The Overhead Contribution shall be adjusted each Contract Year by a percentage equal to that percentage by which the non-seasonally adjusted U.S. City Average Food at Home Consumer Price Index for All Urban Consumers (1982 - 1984 = 100), as available on the first day of the new Contract Year from the Bureau of Labor Statistics of the United States Department of Labor, or any successor index ("CPI"), varies from the same on such day of the prior year.

8. Invoicing and Payment - Countrywide shall invoice Furr's no later than ten days prior to the commencement of each Fiscal Accounting Period for that period's total Costs set forth in the Approved Budget, Overhead Contribution and Base Management Fee. Furr's shall pay the invoiced amount by no later than 4:00 p.m. on the 15th day of such Fiscal Accounting Period by direct transfer of funds to Countrywide's bankers as directed by Countrywide. If such day is not a business day, payment shall be made on the first business day immediately preceding such day.

9. Settlement of Variances - Any differences between the Costs, Overhead Contribution and Management Fees set forth in the Approved Budget, invoiced pursuant to paragraph 9 of this Schedule, and actual Costs incurred, Overhead Contribution and Management Fees for any Fiscal Accounting Period, together with any Incentive Management Fee pursuant to Schedule F, shall be settled by the parties by check, bank draft or direct transfer of funds to the receiving party's bankers, no later than 10 days following the date of delivery of the report referred to in paragraph 3 of this Schedule. Notwithstanding any failure to timely settle any variances, the full amount of invoiced Management Fees and all Costs shall be paid to Countrywide without offset or reduction of any kind.

Countrywide Logistics, Inc. Transportation Budget Assumptions

1. Countrywide Logistics, Inc. will assume responsibility for the transportation on April 25, 1999. Subsequently on June 14, 1999, Option B will be fully implemented. See attached implementation schedule.
2. All costs associated with back hauls and freight hauls as well as any subsequent associated revenues have been excluded from the budget.
3. The cost of any excess equipment has been included as a separate item in the budget. It is assumed that a maximum of \$450,000 of excess equipment costs will be capitalized and amortized over 36 months from April 25, 1999. The budget will need amendments to reflect the actual capitalization. **It is assumed that start up costs of up to \$75,000 will be capitalized and amortized over the same period also, and this is included as separate line item. Detailed information on actual expenditures will be provided as needed. The costs of any hardware, software, office equipment, and furniture and the installation of the same are not included in the budget.**
4. Any cost associated with a material change in the quantity of stores, the location of stores, merchandise volumes shipped, delivery frequencies, or delivery windows have been excluded from the budget.
5. Any extensions costs associated with special deliveries, extra storage, etc. are not budgeted and will be treated as costs outside of Countrywide's reasonable control and will be paid for outside of the budget.
6. Inventory will be screened at the Biceps level to insure accurate information is available for efficient routing.
7. All costs associated with outside carriers pertaining to back hauls including rail carriers have not been budgeted.
8. Labor costs are based upon comparable wage and benefit packages as those currently provided by USF Logistics.
9. The costs associated with a material change in the level of the workforce have not been included for budgetary purposes.
10. Fuel costs have been estimated at a cost of ninety five cents per gallon. Any variance from actual costs will be separately identified and billed on a monthly basis.
11. The budget does not provide for any significant financial penalties for the transition from USF Logistics to Countrywide Logistics, Inc.

SCHEDULE F
MANAGEMENT FEES

1. The "Base Management Fee" will be \$240,000 per year commencing January 1, 2000, as adjusted pursuant to paragraphs 2 and 3 below. No Base Management Fee shall be paid in respect of the period prior to January 1, 2000.

2. Countrywide shall receive an "Incentive Management Fee" of up to \$50,000 per Contract Year, reflecting an incentive for compliance by Countrywide with the annual Approved Budget and the Service Specifications, and the achievement of Key Performance Indicators. For each of the Key Performance Indicators Countrywide meets in each Quarter, Countrywide shall receive the following percentage of the maximum Incentive Management Fee for such period:

<u>Key Performance Indicator</u>	<u>Percentage</u>
----------------------------------	-------------------

[to be determined by mutual agreement of the parties on or before May 30, 1999]

3. In addition, the Management Fees shall be further adjusted by a percentage equal to that percentage by which the non-seasonally adjusted U.S. City Average Food at Home Consumer Price Index for All Urban Consumers (1982 - 1984 = 100), as available on the first day of the new Contract Year from the Bureau of Labor Statistics of the United States Department of Labor, or any successor index ("CPI"), varies from the same on such day of the prior year.

SCHEDULE G
LIMITATIONS ON LIABILITY

A. Limitations on Countrywide's Liability

(a) any significant operational or organizational change of Countrywide, change in personnel or other resources of Countrywide, or change in working methods of Countrywide, which takes place at the direction of Furr's;

(b) the unreasonable withholding or delay by Furr's in granting authority (following a written request by Countrywide) to incur any expenditure or enter into any lease or other agreement or obligation of a kind referred to in Section 8.2;

(c) any loss directly arising from significant breakdown in Furr's computer system or any failure of any Furr's hardware or software utilized in the provision of the Transportation Services to be Year 2000 Compliant;

(d) any overstocking of Products not caused by the negligence of Countrywide;

(e) any material variation in delivery schedule, volume of deliveries, gasoline price, backhaul volume or other information from that provided by Furr's for purposes of preparation of an Approved Budget or pursuant to Schedule D;

(f) any error, omission, or delay in consents, instructions, or information provided by Furr's;

(g) losses of or damages to Products while in the care or control of third parties, including, without limitation, while in transit (and not in the care or control of Countrywide) or while at locations not owned or leased by Countrywide; or

(h) losses or injuries to Furr's employees in the Vehicle Maintenance Facility through no fault of Countrywide.

B. Limitations on Furr's Liability

(a) any losses, injury, or damages suffered by any Countrywide Employee that is not the fault of Furr's.