

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

JUN 13 2001

DROP BOX
United States Bankruptcy Court
Albuquerque, New Mexico

In re:

FURR'S SUPERMARKETS, INC.,
a Delaware Corporation,

Debtor.

Case No. 11-01-10779 SA
Chapter 11

**DEBTOR'S MOTION FOR APPROVAL OF ASSUMPTION
AND ASSIGNMENT OF UNEXPIRED LEASES**

The Debtor-in-Possession, Furr's Supermarkets, Inc. ("Furr's"), by its counsel, pursuant to 11 U.S.C. § 365 and Rule 6006 of the Federal Rules of Bankruptcy Procedure, moves for this Court's approval of the assumption and assignment of the unexpired leases described below and for such other and further relief as is just and proper.

In support of this Motion, Furr's states:

1. On February 8, 2001 (the "Petition Date"), Furr's commenced this case by filing a Voluntary Petition for Relief under Chapter 11 of Title 11 of the United States Code.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

3. Included in the property of this estate are two unexpired leases more particularly described as follows:

a. A Ground Lease dated March 2, 1976, originally between The First National Bank of Odessa Texas, Trustee, as Lessor, and Safeway Stores, Inc., as Lessee (the "Ground Lease"). Furr's is the successor to the interest of Safeway Stores, Inc., as Lessee, under the Ground Lease. The Ground Lease covers real estate upon which a supermarket is situated at 810 West Eddy Street in Pecos, Texas. Pursuant to the terms of the Ground Lease, rent is due in the amount of \$831.00 per month.

b. A Lease Agreement between S.S. Properties Associates II, as Lessor, and Safeway Stores, Inc., as Lessee, dated September 1, 1976 (the "Improvements Lease"). Furr's is the successor to the interest of Safeway Stores, Inc., as Lessee, under the Improvements Lease. The Improvements Lease covers the improvements associated with the

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supermarket store located at 810 West Eddy Street in Pecos, Texas. Pursuant to the terms of the Improvements Lease, rent is due in the amount of \$3,300.00 per month.

The Ground Lease and the Improvements Lease are hereinafter sometimes jointly referred to as the "Leases."

4. Under a Sublease Agreement, dated November 26, 1995 (the "Sublease"), Furr's subleased the Leases to La Tienda Foods, Inc. ("La Tienda").

5. The Leases are of no benefit to the estate, but result in an administrative burden to Furr's. The amount of rent to be paid by Furr's to the lessors under the Leases equals the amount of rent to be paid by La Tienda to Furr's under the Sublease. Further, the remaining term under the Leases is the same as the remaining term under the Sublease. Furr's incurs administrative time each month collecting rent under the Sublease, and payment is the same amount of rent under the Leases.

6. On the Petition Date, Furr's was in arrears under the Ground Lease to the extent of rent totaling \$207.75 and under the Improvements Lease to the extent of rent totaling \$5,135.81. All post-petition obligations under the Leases have been fully satisfied.

7. The Debtor and La Tienda have entered into an Assignment, under which (subject to approval of the Court) Furr's assigns to La Tienda all of the Debtor's right, title and interest under the Leases for the remaining term of the Leases, and La Tienda assumes all of Furr's obligations under the Leases, on the terms set forth in the Assignment. A copy of the Assignment is attached hereto as Exhibit "A."

8. Immediately upon this Court's approval of the Assignment, as requested in this Motion, La Tienda, on behalf of Furr's, will cure the above-described arrearages by paying to the respective lessors under the Leases the sums in arrears.

9. The lessors under the Leases have not sustained any other additional actual pecuniary loss as a result of the above-described arrearages or on account of any defaults under the Leases.

10. Adequate assurance of future performance of the Leases is provided by the fact that La Tienda is a large, financially responsible corporation with substantial earnings, has been subleasing Furr's interests in the Leases for more than five years, has performed under the Sublease in accordance with its terms, and under the terms of the proposed Assignment will continue to make the same payments to the lessors under the Leases as La Tienda previously made to Furr's under the Sublease.

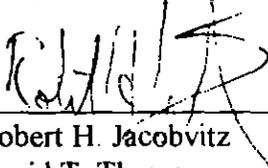
11. The requirements of Bankruptcy Code § 365(a) and (f)(2) have been satisfied with respect to the Assumption and Assignment of the Leases to La Tienda.

12. Upon such Assignment, Furr's would have no further obligations or liability under the Ground Lease, Improvements Lease or Sublease, and the Sublease would be terminated.

WHEREFORE, Furr's requests authority to assume the Ground Lease and the Improvements Lease and, thereafter, to assign its interest in the Leases to La Tienda, and for such other and further relief as is appropriate.

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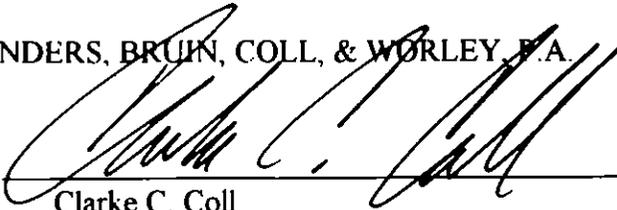
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AND DEBTOR IN POSSESSION

APPROVED:

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By: 

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Attorneys for La Tienda Foods, Inc.

This certifies that a copy of the foregoing Motion was served by first class, United States Mail, postage prepaid, on

this ____ day of May, 2001.

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ASSIGNMENT OF LEASES

This Assignment is entered into as of May ____, 2001 between Furr's Supermarkets, Inc., a Delaware Corporation, of 4411 The 25 Way N.E., Suite 100, Albuquerque, NM 87109, referred to as "Furr's," and La Tienda Foods, Inc. of P.O. Box 1757, Roswell, NM 88202-1757, referred to as "La Tienda."

RECITALS

The parties recite and declare:

A. Furr's is the successor-in-interest, as lessee, to that certain Lease Agreement, as subsequently amended, dated March 2, 1976, from The First National Bank of Odessa, Texas, Trustee, as Lessor, to Safeway Stores, Incorporated, as Lessee, covering real estate located at 810 South Eddy Street in Pecos, Texas, which real estate is more particularly described as follows:

All of Lots 1, 2, 3, 4, 5, 6, 7, 8, 28 and the north 0.25 feet of Lot 9, Parker Heights, in accordance with the Plat of Record in Volume 3, Page 130, Plat Records of Reeves County, Texas, said Plat being a replat of Block 1 of the replat of Block A and Block 70, West Park Addition to the city of Pecos, Reeves County, Texas.

This lease will hereinafter be referred to as the "Ground Lease." A Memorandum of Ground Lease was recorded in Volume 337, Page 405, of the real property records of Reeves County, Texas.

B. Furr's is the successor-in-interest, as lessee, to that certain Lease Agreement, as subsequently amended, dated September 1, 1976, from S. S. Properties Associates II, as Lessor, to Safeway Stores, Incorporated, as Lessee, covering the improvements located at 810 South Eddy Street in Pecos, Texas. This lease will hereinafter be referred to as the "Improvements Lease." A Memorandum of Lease was recorded in Volume 341, Page 540, of the real property records of Reeves County, Texas.

C. The Ground Lease and the Improvements Lease will sometimes hereinafter be jointly referred to as the "Leases."

D. Furr's desires to assign to La Tienda all of Furr's right, title and interest in and to the Leases, and La Tienda desires to accept such assignment and assume the rights, duties, and liabilities of Lessee under the Leases.

NOW THEREFORE, for adequate consideration received, the receipt and sufficiency of which is hereby acknowledged by Furr's and La Tienda:

1. Furr's assigns to La Tienda all of Furr's right, title and interest in and to the Leases, of any kind or character, including, without limitation, all license agreements, warranty agreements, easements, reciprocal parking agreements and other agreements affecting or pertaining to the Leases, effective upon entry of an order by the Bankruptcy Court approving this Assignment of Leases, in the case entitled *In re Furr's Supermarkets, Inc.*, United States Bankruptcy Court, District of New Mexico, Case No. 11-01-10779 SA (the "Bankruptcy Case").

2. La Tienda assumes all rights, duties and obligations of Furr's under the Leases, including all required payments, and shall comply with all terms and conditions of the Leases, effective upon entry of an order in the Bankruptcy Case approving this Assignment of Leases.

3. That certain *Real Property Sublease Agreement* dated November 26, 1995 between Furr's and La Tienda is terminated by this Agreement and is null and void for all purposes, effective upon entry of an order in the Bankruptcy Case approving this Assignment of Leases.

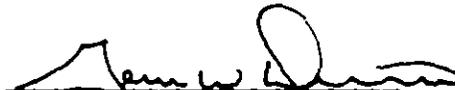
CONSENT OF LESSORS

W. J. Investments, successor-in-interest to the Lessor in the Ground Lease, consents to the assignment and transfer of the Ground Lease, including all terms and conditions, to La Tienda, and waives any rights against Furr's that Lessor has under the Ground Lease, and executes this agreement to evidence these agreements.

S. S. Properties Associates II, Lessor in the Improvements Lease, consents to the assignment and transfer of the Improvements Lease, including all terms and conditions, to La Tienda, and waives any rights against Furr's that Lessor has under the Ground Lease, and executes this agreement to evidence these agreements.

In witness, each party to this assignment has caused it to be executed on the date indicated below.

FURR'S SUPERMARKETS, INC.


By: James W. Danley
Its: SPUP

STATE OF NEW MEXICO }
 } ss.
COUNTY OF CHAVES }

The foregoing instrument was acknowledged before me this 15th day of May, 2001, by **Bill Furr**, President of La Tienda Foods Inc., a New Mexico corporation, by on behalf of said



Linda Sapp
Notary Public

My commission expires: 12-20-04

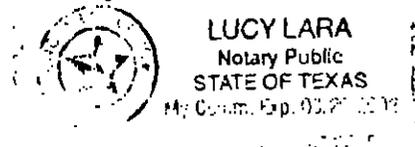
STATE OF Texas }
 } ss.
COUNTY OF Reeves }

The foregoing instrument was acknowledged before me this 8th day of May, 2001, by **Johnny Jordan**, President of **W.J. Investments**, a ~~corporation~~ corporation, by on behalf of said corporation.

Lucy Lara
Notary Public

My commission expires: 03-20-2002

STATE OF _____ }
 } ss.
COUNTY OF _____ }



The foregoing instrument was acknowledged before me this _____ day of May, 2001, by **Sheldon Streisand**, _____ of **S. S. Properties Associates II.**, a New Jersey Limited Partnership, by on behalf of said limited partnership.

Notary Public

My commission expires: _____

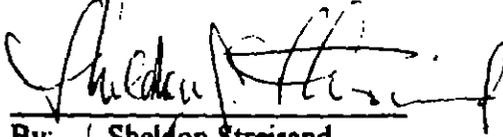
LA TIENDA FOODS, INC.

By: Bill Fenn
Its: President

W. J. INVESTMENTS

By: Johnny Jordan
Its: _____

S.S. PROPERTIES ASSOCIATES II



By: Sheldon Streisand
Its: General Partner

STATE OF NEW MEXICO }
 }ss.
COUNTY OF BERNALILLO }

The foregoing instrument was acknowledged before me this ____ day of May, 2001, by _____ of Furr's Supermarkets, Inc., a Delaware corporation, by on behalf of said corporation.

Notary Public

My commission expires: _____

STATE OF NEW MEXICO }
 } ss.
COUNTY OF CHAVES }

The foregoing instrument was acknowledged before me this _____ day of May, 2001, by **Bill Fenn, President of La Tienda Foods Inc.**, a New Mexico corporation, by on behalf of said corporation.

Notary Public

My commission expires: _____

STATE OF _____ }
 } ss.
COUNTY OF _____ }

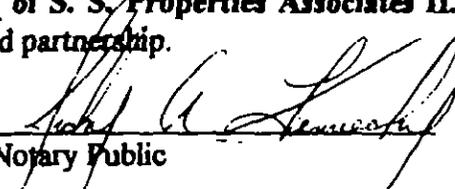
The foregoing instrument was acknowledged before me this _____ day of May, 2001, by **Johnny Jordan**, _____ of **W.J. Investments**, a _____ corporation, by on behalf of said corporation.

Notary Public

My commission expires: _____

STATE OF NEW YORK }
 } ss.
COUNTY OF NASSAU }

The foregoing instrument was acknowledged before me this 10th day of May, 2001, by **Sheldon Streisand**, General Partner of **S. S. Properties Associates II**, a New Jersey Limited Partnership, by on behalf of said limited partnership.



Notary Public

My commission expires: 10/15/01

JUDY A. KENNEDY
Notary Public, State of New York
No. 4987580
Qualified in Nassau County
Commission Expires October 15, 2001