

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

FILED
12:00 MIDNIGHT
JUL 16 2001

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-9A
Chapter 11

DROP BOX
United States Bankruptcy Court
Albuquerque, New Mexico

Debtor.

**MOTION FOR ORDER APPROVING PROCEDURE
RELATING TO THE §365(f)(2) ADEQUATE ASSURANCE
REQUIREMENT FOR ASSIGNMENT OF LEASES**

Furr's Supermarkets, Inc., debtor and debtor in possession ("Debtor") moves the Court for an order approving the procedure relating to the §365(f)(2) adequate assurance requirement for assignment of leases set forth below in paragraph 3 below. In support of this Motion, Debtor states:

1. On June 29, 2001, the Court held a final hearing on Debtor's Motion For Order Approving Sale of Some or All of Debtor's Operating Assets and Granting Related Relief, filed June 1, 2001 (the "Sale Motion"), in which Debtor sought approval of its sale of assets to Purchaser pursuant to an Asset Purchase Agreement dated June 25, 2001 (the "APA"). The Court granted the Sale Motion, and entered a Sale Order (as defined in the APA), on July 3, 2001. Capitalized terms in this Motion, not otherwise defined, are as defined in the APA.

2. The APA provides generally, with respect to the assignment of Leases (defined in the APA as limited to interests in Leased Real Property) and Equipment Leases (together, "Unexpired Leases") relating to Store Properties, as follows:

(a). Purchaser will purchase up to 66 Store Properties. Purchaser may elect not to purchase up to 26 of the Store Properties by giving notice within 45 days after entry of the Sale Order (*i.e.* by August 17, 2001), subject to the terms and conditions set forth in the APA. If a property carved out of the APA is Leased Real Property (the term "Leased Real Property" includes 65 of the 66 operating Store Properties), the Debtor will



not assign the respective Unexpired Leases to Purchaser and the Purchaser will not assume the obligations thereunder. Leased Real Property does not include the Debtor's headquarters.

(b) The Closing Date for the purchase of Debtor's assets is expected to be the earlier of August 31, 2001 or satisfaction or waiver of conditions to Closing set forth in the APA. The APA provides that either party may terminate the APA if Closing has not occurred by October 1, 2001 (defined as the "Outside Date").

(c) Purchaser has the right to direct that Debtor assign Leases and Equipment Leases (if Debtor cannot convey title to the leased equipment) directly to Third Party Purchasers designated by Purchaser, by giving Debtor a Third Party Purchaser Notice, and with respect to Equipment Leases, making an election set forth in Section 4.4 of the APA (the "\$4.4 Notice"). Upon receipt from Purchaser of a Third Party Purchaser Notice designating a Third Party Purchaser, and a \$4.4 Notice, if applicable, Debtor is to seek to assume and assign the relevant Unexpired Leases to the designated Third Party Purchaser.

(d) Debtor is to operate those Store Properties that have not been assigned to third parties for up to 60 days following the Closing Date under a Management Agreement. Purchaser has until three days prior to expiration of the Management Agreement (the "Assignment Deadline") to designate Third Party Purchasers.

(e) On the Assignment Deadline, all Leases for Store Properties not previously rejected, assigned or transferred to a Third Party Purchaser or designated for transfer to a Third Party Purchaser in a timely delivered Third Party Purchase Notice are to be transferred to Purchaser, together with Equipment Leases subject to the terms and conditions specified in the APA.

(f) The following chart summarizes the anticipated deadlines and time frame within which Debtor is required to operate under the APA and Sale Order:

Sale Order	First Deadline to designate Rejected Properties (30 days)	Final Deadline to designate Rejected Properties (45 days)	Closing Date (or earlier)	Outside Closing Date	Management Agreement Expiration (60 days after closing)	Outside date for Management Agreement Expiration
7/3/01	8/02/01	8/17/01	8/31/01	10/01/01	10/30/01	11/30/01

3. Debtor proposes the following procedure with respect to the determination by the Court whether Debtor has satisfied the adequate assurance requirement under Bankruptcy Code §365(f)(2)(B) for assignment of Unexpired Leases to Purchaser or to Third Party Purchasers designated by Purchaser:

(a) Promptly after Debtor's receipt of a Third Party Purchaser Notice (or other notice specifying assignment of an Unexpired Lease to Purchaser or a Third Party Purchaser Notice), Debtor will serve a copy of such Notice on each lessor (or its counsel) under each Unexpired Lease that Debtor seeks to assign to the Purchaser or to a Third Party Purchaser designated in the Notice, together with documentation ("Documentation") consisting of (i) the Third Party Purchaser's (or Purchaser's, as applicable) two most recent year end financial statements (including both a balance sheet and income statement or their equivalent); (ii) the Third Party Purchaser's (or Purchaser's, as applicable) interim financial statements issued in the year 2001; (iii) if the Third Party Purchaser's most recent year end financial statement is not an audited statement, the Third Party Purchaser's two most recent year end federal income tax returns; (iv) documents(s) generally describing the Third Party Purchaser's (or Purchaser's, as applicable) management and its experience in the grocery industry. Such service may be by U.S. mail, overnight courier service or facsimile (if serve by facsimile, a copy also shall be mailed). Debtor shall file a certificate of service stating the date and method of service; and (v) a copy of the Lease and Equipment Lease(s) to be assigned, to the extent in Debtor's possession.

(b) The Court would enter a Confidentiality Protective Order substantially in the form attached hereto as Exhibit A.

(c) Each such lessor shall have five (5) days from receipt of a copy of the Third Party Purchaser Notice (or other notice designating Purchaser as the assignee, as applicable) and Documentation, to file and serve on counsel for the Debtor (i) an objection to the assignment of the Unexpired Lease(s) to the Third Party Purchaser designated in the Third Party Notice or other notice (or to Purchaser, as applicable) on the ground that adequate assurance of future performance by the assignee of the Unexpired Lease(s) is not provided, as required by Bankruptcy Code §365(f)(2)(B), and (ii) an objection the Unexpired Leases served on the lessor is not true and complete copy of the Unexpired Leases between Debtor and the lessor.

(d) If such an objection is filed and served within the 5-day period specified in paragraph 3(c), the Court would hold a final hearing, on short notice to the Debtor, lessor in question, the DIP lenders, Committee and United States Trustee, to determine whether adequate assurance of future performance by the assignee of the Unexpired Lease is provided, as required by Bankruptcy Code §365(f)(2)(B), and/or, as applicable, what is a true and complete copy of the Unexpired Leases in question.

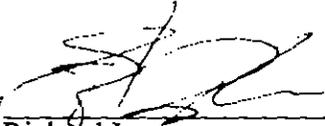
(e) If such an objection is not filed and served within the 5-day period specified in paragraph 3(c), the lessor in question would be deemed to have waived any objection to the assignment on the ground that adequate assurance of future performance by the assignee of the Unexpired Lease is not provided, as required by Bankruptcy Code §365(f)(2)(B), and to have waived any objection that the Unexpired Leases(s) included in the Documentation is not a true and complete copy of such Unexpired Lease(s).

4. Such a procedure would provide for an efficient, orderly and fair mechanism for the Court to decide any objections to assignment of Unexpired Leases under Bankruptcy Code §365(f)(2)(B) and provide appropriate protection for sensitive, confidential, competitive, proprietary financial information provided by Third Party

Purchasers (or Purchaser, as applicable); while at the same time permitting Debtor to comply with its obligations under the APA.

WHEREFORE, the Debtor respectfully requests that this Court enter an order (i) approving the procedure described above, and (ii) granting such other and further relief as is just and proper.

SKADDEN, ARPS, SLATE, MEAGHER &
FLOM LLP

By 
Richard Levin
Stephen Lubben
300 South Grand Avenue, Suite 3400
Los Angeles, California 90071-3144
(213) 687-5000

-and-

JACOBVITZ THUMA & WALKER
a Professional Corporation
Robert H. Jacobvitz
David T. Thuma
500 Marquette N.W., Suite 650
Albuquerque, New Mexico 87102
(505) 766-9272
(505) 766-9287 (fax)

Attorneys for the Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779 SA
Chapter 11

Debtor.

CONFIDENTIALITY PROTECTIVE ORDER

This matter came before the Court upon the motion of the Debtor, Furr's Supermarkets, Inc. ("Debtor"). The Court being sufficiently advised, finds: (i) the notice given of such motion was appropriate in the circumstances, (ii) on July 3, 2001, the Court entered an order (the "Sale Order") approving the Debtor's sale of assets to Fleming Companies, Inc. ("Purchaser") under an Asset Purchase Agreement, dated June 25, 2001 (the "APA"), a copy of which is attached to the Sale Order; (iii) under the APA, Purchaser has the right to direct that Debtor assign (subject to Court approval) unexpired leases relating to store properties directly to Third Party Purchasers (as defined in the APA) designated by Purchaser, or to Purchaser; (iv) Third Party Purchasers require, as a condition to providing sensitive, confidential, competitive, proprietary financial information to store lessors and equipment lessors (together "Lessors"), that such information be protected from disclosure to third parties; (v) it is necessary that Third Party Purchasers provide such information to Lessors so they may evaluate whether adequate assurance of future performance by the assignee of the lease is provided, within the meaning of Bankruptcy Code §365(f)(2); and (vi) entry of this order is appropriate;

IT IS THEREFORE ORDERED THAT:

1. Documents Protected. All Documents, as hereafter defined, produced by Third Party Purchasers to Lessors and the Debtor in connection with a request by the Debtor in this bankruptcy case to approve the assignment of a lease to a Third Party Purchaser (the "§365(f) Litigation"), which the Third Party Purchaser designates as

EXHIBIT "A"

Confidential, shall be used by the party or person receiving the Document for purposes of the §365(f) Litigation only, and for no other purpose whatsoever, and shall not, except as hereafter provided, be intentionally disclosed, made available, or disseminated in any manner. Such Documents may be disclosed only to persons employed by the Lessors and Debtor who have a need to know such information in connection with the §365(f) Litigation, and their respective counsel, independent consultants or experts; provided such persons comply with paragraph 9. Such persons may make copies of the Documents only for the purpose of using the Documents in connection with papers filed with the Court or offered as exhibits or for the purpose of furnishing a copy to the persons identified above.

2. Document Defined. "Document" for the purpose of this Order includes

(a) All documents designated by a Third Party Purchaser as Confidential containing information disclosing any aspect of the financial condition of a Third Party Purchaser, including but not limited to financial statements and income tax returns, and includes originals, duplicates and any memoranda, notes, reports, compilations, and summaries that quote from, summarize or are derived in whole or in part from any information described in any Document which has been designated Confidential; whether in paper, electronic or other form,

(b) Testimony, including the transcripts thereof, of any witness given in depositions or proceedings in the §365(f) Litigation that quote from, summarize or are derived in whole or in part from any information described in any Document which has been designated Confidential; and

(c) Pleadings and other papers, including discovery papers, in the §365(f) Litigation, that quote from, summarize or are derived in whole or in part from any information described in any Document which has been designated Confidential.

3. Designation of Documents. Any Third Party Purchaser may designate as Confidential any documents it provides to a Lessor and the Debtor containing

information disclosing any aspect of the Third Party Purchaser's financial condition, including but not limited to financial statements and income tax returns. Any Document produced as Confidential shall be marked accordingly and shall be subject to the terms of this Order.

4. Designation of Testimony. Any Third Party Purchaser may designate as Confidential any testimony in deposition or in court in the §365(f) Litigation that quotes from, summarizes or is derived in whole or in part from any information described in any Document which has been designated Confidential. Such designation may be made by notifying the reporter, or court, that the testimony is confidential. Any such designation must be in good faith.

5. Pleadings And Exhibits. All Documents filed in this case or offered in evidence that are designated and marked as Confidential shall be treated as confidential by the Clerk of the Court unless otherwise ordered by the Court. Such Documents shall be filed in an envelope endorsed with the style of the case, the title or a description of the type of pleading being filed, and a statement substantially in the following form:

"This envelope contains Documents designated as (CONFIDENTIAL) and is not to be opened nor the contents thereof disclosed except by order of the Court. Filed the __ day of __, 2001, by _____, attorney for ____."

6. Deposition Procedures. Any depositions taken in the §365(f) Litigation shall be subject to this Order unless waived by the Third Party Purchaser producing Documents. Depositions taken subject to this order shall be taken without any person in attendance other than the deposition reporter, the deposition witness, counsel for the witness, and counsel for the Debtor, Third Party Purchaser, Lessor and Purchaser. The reporter shall agree that no copies of the deposition shall be made for, delivered, or made available to any person except such counsel, the court, and the deposition witness when requested, and shall further agree to maintain a record of the name and address of each person to whom copies are delivered.

7. Advice To Client. Nothing in this Order shall prevent or otherwise restrict any counsel from rendering advice to her or his client and, in the course thereof, relying generally upon his examination of Documents designated Confidential.

8. Return Of Confidential Documents. Within 30 days after the conclusion of the §365(f) Litigation by settlement or final judgment or final order, all Documents, including all copies (except those filed of record or submitted in evidence) shall be returned to the Third Party Purchaser originally producing said Document. The provisions of this order shall survive the conclusion of the §365(f) Litigation.

9. Parties Bound. All persons including counsel and their employees, parties hereto and their respective officers and employees, independent consultants or experts and witnesses, who are allowed access to or receive communications regarding any Document designated as Confidential shall execute a written undertaking that the recipient of the disclosure has been furnished a copy of this Order and understands that he or she is bound by its terms.

THE HONORABLE JAMES S. STARZYNSKI
UNITED STATES BANKRUPTCY JUDGE

Submitted by:

JACOBVITZ THUMA & WALKER
a Professional Corporation

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

- and -

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

300 South Grand Avenue, Suite 3400
Los Angeles, California 90071-3144
(213) 687-5000

Attorneys for the Debtor in Possession