UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, NM

In re:

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

Debtor.

Case No. 11-01-10779 SA
Chapter 11

MOTION REGARDING PURCHASE OF
WORKERS COMPENSATION INSURANCE

The Debtor in Possession, Furr's Supermarkets, Inc. ("Debtor"), by counsel, pursuant to Bankruptcy Code § 363, requests, as set forth more fully below, that the Court (i) determine that that, under Bankruptcy Code § 363(c)(1), the Debtor may, without Court approval, deposit additional security with the New Mexico Workers Compensation Administration ("WCA") to cover the "Shortfall" (defined in paragraph 9 below), which funds, together with additional funds already held by WCA, would be used to purchase workers compensation insurance, (or) (ii) if and to the extent Court approval is required, that the Court grant such approval. Further, if and to the extent any Court approval is required, Debtor seeks authority to purchase the "Insurance" (defined in paragraph 9 below). Finally, the Debtor requests the Court to find that the notice given of this Motion was appropriate under the particular circumstances.

In support of this Motion, the Debtor states:

1. On February 8, 2001 (the "Petition Date"), the Debtor filed a voluntary petition in this Court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, "Bankruptcy Code"). The Debtor continues to operate its business and manage its properties as debtor-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtor operates a regional supermarket chain, with operations in New Mexico and Western Texas. On the Petition Date, the Debtor operated 45 stores in the

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State of New Mexico, and employed approximately 3,250 individuals in New Mexico. During the pendancy of the Bankruptcy Case, the Debtor has downsized its operations.

3. The Court entered an order on July 3, 2001 approving the Debtor's sale of substantially all of its assets to Fleming Companies, Inc. That sale is expected to close on or about August 31, 2001.

4. WCA administers laws that provide a workers' benefit system in New Mexico pursuant to Chapter 52, NMSA 1978 (the "NM Workers Compensation Laws"). The New Mexico workers compensation program compensates employees with respect to certain work related injuries, including for lost wages, permanency, disfigurement, and medical expenses.

5. The Debtor provides workers' compensation coverage to its New Mexico employees as a certified self-insurer pursuant to Section 52-1-4A NMSA and the Self-Insurers' Guarantee Fund Act, §52-8-1 *et seq.* NMSA 1978. Such obligations were reinforced by two letters of credit in the amounts of $1,996,330 and $496,330 issued by financial institutions in favor of the New Mexico Self-Insurers' Guarantee Fund Commission ("Commission"). After the Petition Date, the Commission made draws on the two letters of credit, and is holding $2,492,660 plus any earnings thereon (the "Existing Security"). Such letters of credit were not property of the estate, and the draws by the Commission against the letters of credit were not subject to the automatic stay.

6. On February 8, 2001, the Court entered an Order Authorizing (A) Payment of Pre-petition Employee Obligations and (B) Continuation of Employee Benefit Plans and Programs Post-petition (the "Employee Benefits Order"). Under the Employee Benefits Order, the Debtor is authorized to continue to manage and fund its workers' compensation programs, and to pay pre-petition claims, settlements and assessments arising under such programs, including but not limited to, payments. The Debtor has been doing so.

7. Under the NM Workers Compensation Laws:

(a) The Director of the WCA (the "Director") has authority to revoke the Debtor's certification of self insurance under the WCA Laws on the terms and conditions specified therein, including if the Director, with good cause, ceases to be satisfied that the Debtor is financially solvent. See 11 NMAC 4.8.8.7.2.

(b) Upon revocation of the certificate of self-insurance (known as decertification), the Debtor would be required to post security with the WCA in an amount sufficient to pay both known claims and associated expenses, and Claims Incurred But Not Reported and associated expenses. See 11 NMAC 4.8.8.7.3.

(c) The Director is empowered to commence an action in state court to enjoin the employer (here, the Debtor) from continuing its business operations until it has complied with the requirement that the employer have adequate worker compensation insurance (which requirement would apply to Debtor if its certificate of self-insurance were revoked) or security for the payment of benefits under the Workers Compensation Act.). Further, the statute provides that upon a showing that an employer has filed to have such insurance, the court shall grant the injunction. See §52-1-62 NMSA 1978.

8. The Director has not revoked the Debtor's self-insurance certificate, based on the reasonable expectation that the Existing Security would be sufficient to convert Debtor's self-insured obligations to insured status, or that Debtor would make up any shortfall. The Director has been cooperative with the Debtor. The Director has allowed the Debtor maximum time and flexibility to obtain the best possible price for obtaining workers compensation insurance, by not revoking Debtor's self-insurance certificate, which has inured to the substantial benefit of the estate.

9. On or about Thursday, August 23, 2001, AIG provided Debtor's insurance broker with a quote in the amount of $2,788,000 to issue workers compensation insurance that would cover both pre- and post-petition claims, including IBNR (Incurred But Not Reported) claims (the "Insurance"). The shortfall between the insurance premium and

Existing Security (the "Shortfall") is about $300,000. On information and belief, the portion of the insurance premium attributable to post-petition workers compensation claims (which are administrative claims) exceeds the amount of the Shortfall.

10. On information and belief, unless funds are made available to cover the Shortfall, the Director, to protect health and welfare of injured employees, intends to exercise his statutory remedies prior to the closing of the sale transaction between the Debtor and Fleming.

11. The Debtor has funds available to fund the Shortfall, and wishes to do so, irrespective of whether the Director would or could exercise his statutory remedies. The health and welfare of injured employees should be protected, the Shortfall represents an administrative expense to be paid in the ordinary course of business, and the funding of the Shortfall is in the best interests of the estate.

WHEREFORE, Debtor seeks the relief requested above, and such other relief as appropriate.

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this 24th day of August, 2001.