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U.S. BANKRUPTCY COURT  
ALBUQUERQUE, N.M.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re

Case No. 11-01-10779-SA  
Chapter 11

FURR'S SUPERMARKETS, INC.,

Debtor.

MOTION FOR ORDER APPROVING THE DEBTOR'S REJECTION  
OF CERTAIN UNEXPIRED NONRESIDENTIAL REAL ESTATE LEASES

Furr's Supermarkets, Inc. (the "Debtor") moves for an order under 11 U.S.C. § 365(a) approving its rejection of certain unexpired leases of nonresidential real property. In support of this Motion, the Debtor respectfully represents as follows:

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

RELIEF REQUESTED

2. The Debtor requests approval under 11 U.S.C. § 365(a) of its rejection of two unexpired leases of nonresidential real property, listed on Exhibit

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A, attached hereto (the "Leases"), the rejection to be effective as of the date of this Motion (the "Effective Date").

#### BASIS FOR RELIEF

3. One of the Leases is for a property at which the Debtor is no longer operating its grocery store business. The other Lease is for vacant office space. The Leases are costly to maintain and unnecessary to the Debtor's ongoing operations and business.

4. The aggregate rental obligation under the Leases is \$12,139.67 per month. In addition, the Leases, in general, obligate the Debtor to insure, perform certain maintenance on and incur other related charges associated with the leased properties. The Debtor has determined in its business judgment that these costs constitute a substantial and unnecessary drain on the Debtor's cash resources. By rejecting the Leases now, the Debtor will avoid unnecessary administrative charges that provide no benefit to the its estate, creditors or interest holders.

5. For these reasons, the rejection of the Leases is in the best interests of the Debtor's estate, creditors and interest holders.

#### APPLICABLE AUTHORITY

6. Under Bankruptcy Code § 365(a), a debtor, "subject to the court's approval, may assume or reject an executory contract or an unexpired lease." Most courts hold that a debtor's decision whether to assume or reject a lease is subject to review under the business judgment standard. The debtor satisfies this

standard if it shows that rejection will benefit the estate.<sup>2</sup> If the debtor has exercised its business judgment reasonably, the court should approve the proposed assumption or rejection.<sup>3</sup>

7. The Leases are costly to maintain and unnecessary to the Debtor's ongoing operations and business. They constitute an unnecessary drain on the Debtor's cash resources. The decision to reject them reflects the Debtor's exercise of sound business judgment.

WHEREFORE, the Debtor respectfully requests that the Court enter an order (i) approving the Debtor's rejection of the Leases as of the Effective Date, and (ii) granting such other and further relief as is just and proper.

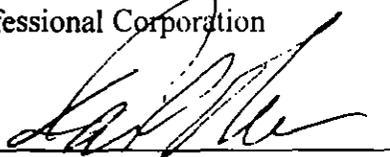
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<sup>2</sup> See In re Mile Hi Metal Systems, Inc., 899 F.2d 887, 896 n.13 (10<sup>th</sup> Cir. 1990) (Seymour, J. concurring) (so-called "business judgment" test applies to ordinary executory contracts); In re Federated Dept. Stores, Inc., 131 B.R. 808, 811 (S.D. Ohio 1991) ("Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases"); Commercial Fin., Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii Dimensions, Inc.), 47 B.R. 425, 427 (D. Haw. 1985) ("Under the business judgment test, a court should approve a debtor's proposed rejection if such rejection will benefit the estate.") (citation omitted).

<sup>3</sup> Sharon Steel Corp. v. National Fuel Gas Distribution, 872 F.2d 36, 39-40 (3d Cir. 1989).

Dated: Albuquerque, New Mexico  
March 1, 2001

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*Attorneys for the Debtor-in-Possession*

LOCATION NO.	PROPERTY LEASED	LESSOR	MONTHLY RENT	LEASE TERM
171-03	1920 Columbia. SE Albuquerque. NM (Vacant Office)	Marken Company Attn: Martin Haynes P.O. Box 9043 Albuquerque, NM 87119	\$2,973.00	January 1, 1993 to March 31, 2001
906	1501 W. Pierce Carlsbad, NM	Edwin L. Dunagan & Albert E. Carter Attn: John Dunagan 212 W. Stevens Carlsbad, NM 88220	\$9,166.67	September 1, 1997 to August 31, 2001

**EXHIBIT**

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