

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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

IN RE:
FURR'S SUPERMARKETS, INC.,
Debtor.

NO. 11-01-10779 SA

**OBJECTIONS OF WERNER KINDERMAN, LESSOR STORES 881 AND 884 TO
NOTICES RELATING TO THE §365(f)(2) ADEQUATE ASSURANCE
REQUIREMENT FOR ASSIGNMENT OF STORE LEASES AND LEASE
ESTOPPEL**

COMES NOW Werner Kindermann, Lessor of Furr's Supermarkets, Inc. Stores 881 and 884, by and through his attorneys Keleher & McLeod, P.A. (James C. Jacobsen) and in objection to the two Debtor's Notices Relating to the §365(f)(2) Adequate Assurance Requirements for Assignment of Store Leases, Lease Estoppel and of Final Hearing, received August 20, 2001 (Store 884), and August 22, 2001 (Store 881), states:

1. With respect to Store 881, to be assigned to Raley's, the packet of lease material provided by the Debtor fails to contain the documents attached hereto as Exhibit A and incorporated by reference as if set forth in its entirety, which together create an option, expiring September 14, 2001, for the extension and modification of Store 881's Lease.

2. With respect to Store 884, to be assigned to Smith's Food & Drug Stores, the packet of lease materials provided by the Debtor contains an Agreement for Payment and Reimbursement for Maintenance and Repairs to FSI Store No. 884, but not a copy of the fully executed document. Kindermann provides, as Exhibit B, a copy of the document executed by all parties.

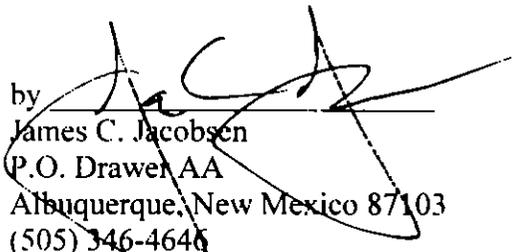
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3. Also with respect to Store 884, as part of the negotiations that resulted in the Agreement for Payment and Reimbursement for Maintenance and Repairs to FSI Store No. 884, the parties also agreed to and executed a First Amendment to Supermarket Lease, a true copy of which is Attached as Exhibit C. This First Amendment was not attached to the packet of lease materials provided by the Debtor.

4. The copies of Leases served by the Debtor in conjunction with the Notice relating to assignment of the Leases for Stores 881 and 884 are not true and complete copies of the Leases, including all amendments, modifications, and supplements thereto.

WHEREFORE, Werner Kindermann prays the Court determine that the copies of the Leases served with the Notices relating to the §365(f)(2) Adequate Assurance Requirements for Assignment of Store Leases, Lease Estoppel, and of Final Hearing served in conjunction with the proposed assignments of the Leases for Stores 81 and 884 are not true and complete copies of the Leases, including all amendments, modifications, and supplements thereto, direct that the documents attached hereto be incorporated with the Leases to be assigned to form a complete packet, provide that the assignees of the Leases for Stores 881 and 882 are estopped from denying their validity and effect, and granting such other and further relief as the Court deems just and appropriate.

Respectfully submitted,
Keleher & McLeod, P.A.

by 
James C. Jacobsen
P.O. Drawer AA
Albuquerque, New Mexico 87103
(505) 346-4646
Fax No. (505) 346-1370

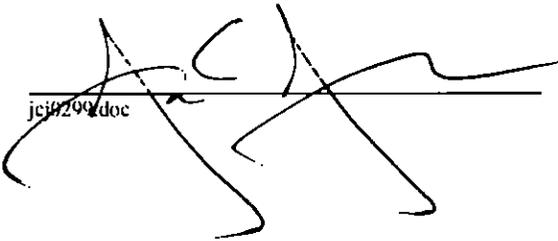
I certify that I mailed,
first class postage prepaid, and faxed,
a true copy of the foregoing
Objection to:

Robert H. Jacobvitz
Jacobvitz, Thuma & Walker
500 Marquette NW, #650
Albuquerque, New Mexico 87102
Fax 505-766-9287

Stephen J. Lubben
Skadden Law Firm
300 S. Grand, Suite 3400
Los Angeles, California 90071-3144
Fax 213-687-5600

and mailed a copy to:
U.S. Trustee
P.O. Box 608
Albuquerque, New Mexico 87103

this 23d day of August 2001.


A handwritten signature in black ink, appearing to read 'R. H. Jacobvitz', is written over a horizontal line. The signature is stylized and somewhat cursive.

jcj#299.doc

EXHIBIT A

Mr. Werner Kindermann
C/O Mr. Jan Friederich

March 12, 2001

Dear Mr. Kindermann,

Furr's wishes to express its continued interest in the Repair and Maintenance Agreement for Store 881 and desires to extend the funding period to September 14, 2001.

The amount to be funded for Store 881 remains U.S. \$816,131.00; this amount must be transferred to Furr's Supermarket's bank account by 3:00pm U.S. Central Standard Time no later than September 14, 2001 or else Furr's will be forced to rescind its interest in this agreement.

The terms and conditions of the previous agreement will remain intact except for the commencement date for repayment will begin October 1, 2002 instead of December 27, 2001 and will roll forward accordingly through October 26, 2012.

Thank you for your efforts in the timely closing and funding the Agreement for Payment and Reimbursement for Maintenance and Repairs to FSI 881 and 884.

Sincerely,



Gene W. Denison
Sr. VP
Furr's Supermarkets, Inc.

CC: Mr. Jan Friederich
Mr. Jim Pleasant

WV A. 11



Supermarkets, Inc.

January 29, 2001

Mr. Werner Kindermann

RE: FSI Stores 881 and 884

Dear Mr. Kindermann:

Reference is made to our two (2) Agreements for Payment and Reimbursement for Maintenance and Repairs, dated December 15, 2000, covering your agreement to reimburse Furr's Supermarkets, Inc. ("FSI") for certain maintenance and repair expenses incurred by FSI at its stores numbered 881 and 84 respectively, which are leased from you. One such Agreement relates to Store 881 and the other Agreement relates to Store 884.

Under the Maintenance and Repair Agreement, you have funded the amount as set forth in the Agreement for Store 884, but have not yet funded the amount agreed for Store 881. I understand you are willing to fund Store 881's Agreement for Payment and Reimbursement for Maintenance and Repairs on or before April 13, 2001. As a result of the delay in funding the amount agreed for Store 881, the schedule of payments as set forth in the Store 881 Agreement for Payment and Reimbursement for Maintenance and Repairs will change from the current drafts that were prepared in December of last year. We believe it prudent at this time to agree to the revised schedule of payments to be set forth in Store 881's Agreement for Payment and Reimbursement for Maintenance and Repairs. Accordingly, attached to this letter is a revised payment schedule. By executing this letter agreement in the place provided below for your signature, you agree to the revised payment schedule for Store 881's Agreement for Payment and Reimbursement for Maintenance and Repairs.

Expressly conditioned upon your payment to FSI on or before April 13, 2001 of \$816,131.00, FSI agrees to accept \$731,379.87 from you, which amount will be deemed by FSI and you to constitute payment in full for the aggregate amount you agreed to advance for Store 881's Agreement for Payment and Reimbursement for Maintenance and Repairs. Of the \$84,751.13 reduced amount, we agree that \$29,847.38 relates to Store 881 and \$54,903.75 relates to Store 884. FSI and you have agreed to this reduction with respect to each store so as to satisfy your desire and requirement that you receive some benefit from rent differential for the time period beginning December 27, 2000 through December 26, 2001. Both FSI and you agree to this stipulate amount as settlement in full for this differential.

Our agreements as contained in this letter agreement are expressly conditioned and dependent upon your timely funding on or before April 13, 2001 of the remaining amount due from you with respect to Store 881 as set forth in this letter agreement. If such payment is not timely received by FSI on or prior to April 13, 2001, then all of the agreements and understandings set forth in this letter agreement shall automatically be null and void.

Furr's Supermarkets, Inc.
1730 Montano Road, N.W.
Albuquerque, N.M. 87107
505-344-6525
Fax: 505-344-1118



100% Recycled Pa



This letter agreement may be executed in counterparts by facsimile signature.

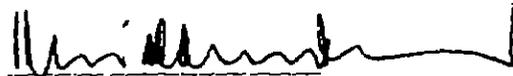
If the foregoing is consistent with your understandings of our agreements, please so indicate by executing a counterpart of this letter agreement in the place provided below and return one fully-executed multiple original of this letter agreement to me. At such time, the terms and agreements contained in this letter agreement shall constitute an obligation of each of us as set forth herein.

Very truly yours,

Furrs Supermarkets, Inc.

By: 
Gene W. Denison
Senior Vice President

AGREED AND ACCEPTED:


Werner Kindermann

FURR'S SUPERMARKETS INC.

4411 The 25 Way N.E., Suite 100
Albuquerque, New Mexico 87109

TELEPHONE: 505/761-0804

FACSIMILE: 505/944-2671

January 29, 2001
~~December 15, 2000~~

Werner Kindermann

Re: Agreement for Payment and Reimbursement for Maintenance and Repairs to FSI Store No. 881

Dear Mr. Kindermann:

Reference is made to the Supermarket Lease ("Lease") between you, as "Lessor," and Furr's Supermarkets, Inc., ("Furr's") a Delaware corporation (as successor "Lessee" to Furr's, Inc., a Texas corporation), dated December 5, 1986, covering the above-captioned Supermarket Store. Over the past several years, Furr's has paid at least \$816,131 for maintenance and repair to this Store. A general description of the maintenance and repair items is attached to this letter agreement and incorporated herein by reference for all purposes.

April 13, 2002

Reimbursement/Additional Payments to You. Furr's has requested you, and you have agreed, to reimburse Furr's for the \$816,131 with the express understanding and agreement that Furr's will make the following annual payments to you under this letter agreement, commencing ~~December 27, 2001~~ and continuing throughout the balance of the term of this letter agreement as follows:

Applicable Term

Increase in Annual Payments
(To be paid in 12 monthly installments)

12/27/01 - 12/26/02	4/13/02 - 4/12/03	\$ 85,693.76
12/27/02 - 12/26/06	4/13/03 - 4/12/07	\$ 94,263.00
12/27/06 - 12/26/11	4/13/07 - 4/12/12	\$ 58,790.00

The foregoing annual payments will be due in twelve substantially equal monthly installments, each of which monthly installment will be due with Furr's monthly rental payment under the Lease. All payments shall be made by Furr's without demand, offset or other claim by Furr's against you. A monthly payment, as required under this letter agreement, will be in default of this letter agreement if Furr's doesn't make the payment within ten (10) days after written notice from you that such payment has not been received.

Werner Kindermann
December 15, 2000
Page 2

Default Under Lease. Should Furr's default in making any monthly payment to you as set forth above, then in such event, Furr's agrees that you shall be entitled to declare an event of default under the Lease and exercise all remedies available to you as set forth in paragraph 26 of the Lease.

Termination of Lease. At such time as the Lease terminates (whether on expiration of the term of the Lease or as described in paragraph 26 of the Lease), Furr's shall have no further obligation or liability to you for return of, or on, the \$816,131 you are advancing to Furr's under this letter agreement.

W **Your Date for Advancement.** You will advance the \$816,131 to Furr's by ^{April 13} ~~December 26,~~ 2000-2001. *W*

If the foregoing agreements are consistent with your understandings of the agreements we have made concerning the \$816,131 funds you have agreed to pay Furr's for reimbursement of the maintenance and repair expenses incurred by Furr's, please so indicate in the place provided below and furnish me with a fully executed multiple original of this letter agreement, whereupon this letter agreement shall be binding upon both you and Furr's.

Thank you very much.

FURR'S SUPERMARKETS, INC.

By: *Gene W. Denison*
Its: *SPVP*

GENE W. DENISON
SENIOR VICE PRESIDENT
RETAIL OPERATIONS

AGREED AND ACCEPTED:

Werner Kindermann
Werner Kindermann

FIRST AMENDMENT TO SUPERMARKET LEASE

THIS FIRST AMENDMENT TO SUPERMARKET LEASE ("First Amendment"), made and entered into as of the 15th day of December, 2000, between Werner Kindermann, an individual, hereinafter referred to as "LESSOR", and Furr's Supermarkets, Inc., a Delaware corporation, hereinafter referred to as "LESSEE".

1. Recitals.

On December 5, 1986, Lessor and Furr's, Inc., as lessee, executed a Supermarket Lease relating to property located in Rio Rancho, Sandoval County, New Mexico. Lessee is the successor lessee to Furr's, Inc. under the Supermarket Lease. Except as hereinafter defined, all capitalized terms used in this First Amendment shall have the same meaning as defined in the Supermarket Lease. The parties have agreed that the Primary Term and Option Term under the Supermarket Lease shall be changed and modified as set forth in this First Amendment. The parties have further agreed that the rental provisions of the Supermarket Lease shall be changed and modified as further set forth in this First Amendment.

2. Consideration.

For and in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the parties, Lessor and Lessee hereby agree to amend the Supermarket Lease as set forth in the following paragraphs.

3. Amendment to Subparagraphs 4(a) and 4(b).

Subparagraphs 4(a) and 4(b) of the Supermarket Lease are hereby deleted in their entirety and the following Subparagraphs 4 (a) and 4(b) are substituted in their places from and after the date of execution of this First Amendment:

"(a) Minimum Annual Rent: The Lessee agrees to pay the Lessor a minimum annual rental for the lease space in the leased building, payable monthly in advance, in twelve (12) substantially equal installments on the first day of each month during the term of this lease. The amount of the minimum annual rental for the time period commencing December 27, 2000 and ending December 26, 2002 will be \$457,531.00, net to the Lessor."

"(b) Adjustments to Annual Rental: The minimum annual rental will be adjusted upward on December 27, 2002 and for the respective periods thereafter indicated, as follows:

<u>Lease Years</u>	<u>Minimum Annual Rental</u>
12/27/02 - 12/26/06	\$ 503,284.10
12/27/06 - 12/26/10	\$ 553,612.51
12/27/10 - 12/26/14	\$ 608,973.76
12/27/14 - 12/26/18	\$ 669,871.13
12/27/18 - 12/26/22	\$ 736,858.24
12/27/22 - 12/26/26	\$ 810,544.06
12/27/26 - 12/26/30 (First renewal term)	\$ 874,869.00
12/27/30 - 12/26/35 (Second renewal term)	\$ 962,356.00
12/27/35 - 12/26/40 (Third renewal term)	\$1,058,591.00
12/27/40 - 12/26/45 (Fourth renewal term)	\$1,164,451.00

4. Deletion of Percentage Rental.

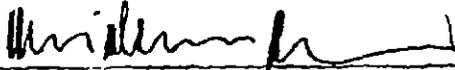
(i) Subparagraph 4(c) (relating to percentage rental) and all other references in the Supermarket Lease to percentage rental, and (ii) all of paragraph 6 of the Supermarket Lease (relating to "Gross Sales") and all other references to the Supermarket Lease to "Gross Sales," are hereby deleted in their entirety from and after the date of execution of this First Amendment.

5. No Other Amendments or Modifications.

The Lessee and Lessor agree that except as modified in this First Amendment, there are no other amendments, modifications or changes to the Supermarket Lease.

EXECUTED IN MULTIPLE ORIGINALS as of the day first above written.

LESSOR:



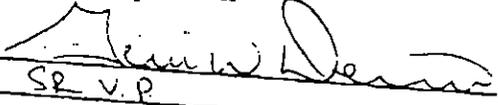
WERNER KINDERMANN,
an individual

LESSEE:

FURR'S SUPERMARKETS, INC.,
a Delaware corporation

By

Its:



SR V.P.

GENE W. DENISON
SENIOR VICE PRESIDENT
RETAIL OPERATIONS

950992.4

EXHIBIT B

FURR'S SUPERMARKETS INC.4411 The 25 Way N.E., Suite 100
Albuquerque, New Mexico 87109

TELEPHONE: 505/761-0804

FACSIMILE: 505/944-2671

December 15, 2000

Werner Kindermann

Re: Agreement for Payment and Reimbursement for Maintenance and Repairs to FSI
Store No. 884

Dear Mr. Kindermann:

Reference is made to the Supermarket Lease ("Lease") between you, as "Lessor," and Furr's Supermarkets, Inc., ("Furr's") a Delaware corporation (as successor "Lessee" to Furr's, Inc., a Texas corporation), dated December 5, 1986, covering the above-captioned Supermarket Store. Over the past several years, Furr's has paid at least \$983,869 for maintenance and repair to this Store. A general description of the maintenance and repair items is attached to this letter agreement and incorporated herein by reference for all purposes.

Reimbursement/Additional Payments to You. Furr's has requested you, and you have agreed, to reimburse Furr's for the \$983,869 with the express understanding and agreement that Furr's will make the following annual payments to you under this letter agreement, commencing December 27, 2001 and continuing throughout the balance of this letter agreement, as follows:

<u>Applicable Term</u>	<u>Increase in Annual Payments</u> (To be paid in 12 monthly installments)
12/27/01 - 12/26/02	\$103,306.24
12/27/02 - 12/26/06	\$113,637.00
12/27/06 - 12/26/11	\$ 73,410.00

The foregoing annual payments will be due in substantially equal monthly installments, each of which monthly installment will be due with Furr's monthly rental payment under the Lease. All payments shall be made by Furr's without demand, offset or other claim by Furr's against you. A monthly payment, as required under this letter agreement, will be in default under this letter agreement if Furr's doesn't make the payment within ten (10) days after written notice from you that such payment has not been received.

December 15, 2000

Page 2

Default Under Lease. Should Furr's default in making any monthly payment to you as set forth above, then in such event, Furr's agrees that you shall be entitled to declare an event of default under the Lease and exercise all remedies available to you as set forth in paragraph 26 of the Lease.

Termination of Lease. At such time as the Lease terminates (whether upon expiration of the term of the Lease or as described in paragraph 26 of the Lease), Furr's shall have no further obligation or liability to you for return of, or on, the \$983,869 you are advancing to Furr's under this letter agreement.

Your Date for Advancement. You will advance the \$983,869 to Furr's by December 15, 2000. 28 }
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No Claim to Property. Reference is made to the Agreement ("Agreement"), dated December 26, 1986, between you and Mex/Tex Realty Company, a Texas corporation ("Mex/Tex"), concerning, among other things, an approximately 2.3 acre parcel of land, defined as the "Remaining Parcel," in such Agreement. A copy of the Agreement is attached hereto and incorporated herein by reference for all purposes. The Remaining Parcel is described on Exhibit "C" of the Agreement. This letter confirms Furr's understanding that you have title to the Exhibit "C" property attached to the Agreement. Furr's has made arrangements for a title search to be made of this property confirming Furr's understanding. The title search will be provided to you upon receipt by Furr's. This letter will further constitute Furr's agreement with you that Furr's claims no interest in the Exhibit "C" property attached to the Agreement other than the right to use said Exhibit "C" property as lessee under the Lease. Should you request, Furr's will cooperate with you to request Mex/Tex to confirm that it (Mex/Tex) makes no claim to the Exhibit "C" property attached to this letter agreement.

If the foregoing agreements are consistent with your understandings of the agreements we have made concerning the \$983,869 funds you have agreed to pay Furr's for reimbursement of the maintenance and repair expenses incurred by Furr's, please so indicate in the place provided below and furnish me with a fully executed multiple original of this letter agreement, whereupon this letter agreement shall be binding upon both you and Furr's.

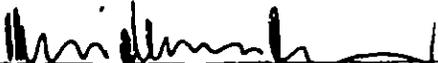
Thank you very much.

FURR'S SUPERMARKETS, INC.

By: 

Its: SE VP

AGREED AND ACCEPTED:


Werner Kindermann

GENE W. DENTSON
SENIOR VICE PRESIDENT
RETAIL OPERATIONS

950997.1

EXHIBIT C

FIRST AMENDMENT TO SUPERMARKET LEASE

THIS FIRST AMENDMENT TO SUPERMARKET LEASE ("First Amendment"), made and entered into as of the 29th day of December, 2000, between Werner Kindermann, an individual, hereinafter referred to as "LESSOR", and Furr's Supermarkets, Inc., a Delaware corporation, hereinafter referred to as "LESSEE".

1. Recitals.

On December 5, 1986, Lessor and Furr's, Inc., as lessee, executed a Supermarket Lease relating to property located at the intersection of Coors and Central Boulevard in Albuquerque, Bernalillo County, New Mexico. Lessee is the successor lessee to Furr's, Inc. under the Supermarket Lease. Except as hereinafter defined, all capitalized terms used in this First Amendment shall have the same meaning as defined in the Supermarket Lease. The parties have agreed that two (2) additional five (5) year, and one (1) additional four (4) year Option Terms shall be granted under the Supermarket Lease as set forth in this First Amendment. The parties have further agreed that the rental provisions of the Supermarket Lease shall be changed and modified as further set forth in this First Amendment. Finally, Lessor has agreed to execute the Amendment to the ECR as requested by Lessee.

2. Consideration.

For and in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by the parties, Lessor and Lessee hereby agree to amend the Supermarket Lease as set forth in the following paragraphs.

3. Addition of Option Terms under Subparagraph 3(b).

The first sentence of Subparagraph 3(b) of the Supermarket Lease is hereby deleted in its entirety and the following first sentence of Subparagraph 3(b) is substituted in place for all purposes from and after the date of execution of this First Amendment:

"(b) Option Term: The Lessor hereby grants unto the Lessee the right and option to extend this lease for six (6) additional five (5) year terms and, thereafter, for one (1) four (4) year term on the same terms and conditions as contained herein, except as to rent and renewal options. Additionally, the end of each option renewal term of this lease is changed so as to end on December 31 of the applicable calendar year, rather than on December 26 of such calendar year. For example, the first option term shall commence on December 27, 2011 and shall end on December 31, 2016, the second option term shall commence on January 1, 2017 and end on December 31, 2021, etc."

4. Amendment to Subparagraphs 4(a) and 4(b).

Subparagraphs 4(a) and 4(b) of the Supermarket Lease are hereby deleted in their entirety and the following Subparagraphs 4 (a) and 4(b) are substituted in their places from and after the date of execution of this First Amendment:

“(a) Minimum Annual Rent: The Lessee agrees to pay the Lessor a minimum annual rental for the lease space in the leased building, payable monthly in advance, in twelve (12) substantially equal installments on the first day of each month during the term of this lease. The amount of the minimum annual rental for the time period commencing December 27, 2000 and ending December 26, 2002 will be \$549,037.50, net to the Lessor.”

“(b) Adjustments to Annual Rental: The minimum annual rental will be adjusted upward on December 27, 2002 as follows:

<u>Lease Years</u>	<u>Minimum Annual Rental</u>
12/27/02 - 12/26/06	\$ 603,941.25
12/27/06 - 12/26/10	\$ 664,335.37
12/27/10 - 12/31/14	\$ 730,768.90
1/01/15 - 12/31/18	\$ 803,845.79
1/01/19 - 12/31/22	\$ 884,230.36
1/01/23 - 12/31/26	\$ 972,653.39
1/01/27 - 12/31/31	\$1,050,607.00
1/01/32 - 12/31/36	\$1,155,668.00
1/01/37 - 12/31/41	\$1,271,234.00
1/01/42 - 12/31/45	\$1,389,350.00

5. Deletion of Percentage Rental.

(i) Subparagraph 4(c) (relating to percentage rental) and all other references in the Supermarket Lease to percentage rental, and (ii) all of paragraph 6 of the Supermarket Lease (relating to "Gross Sales") and all other references to the Supermarket Lease to "Gross Sales," are hereby deleted in their entirety from and after the date of execution of this First Amendment.

6. Agreement to Amendment to Easements, Covenants and Restrictions Agreement.

The Lessor hereby consents to the proposed Sixth Amendment to Declaration of Easements, Covenants and Restrictions Agreement ("ECR") so as to permit a vehicle fuel station ("Fuel Station") to be installed and operated on the leased premises, should the Lessee desire to install and so operate a vehicle fuel station out of the leased premises.

7. Future Development of Pad Site.

The following Section 35 is hereby added to the Supermarket Lease from and after the date of execution of this First Amendment:

“35. FUEL STATION.

Upon execution of the Sixth Amendment to ECR by all parties to the ECR, Lessee intends to study the feasibility of constructing and operating a Fuel Station within the leased premises or outside the leased premises, but within the shopping center (“Shopping Center”) covered by the ECR. Whether or not to construct and operate a Fuel Station, and the size and location of the Fuel Station (if Lessee elects to proceed with a Fuel Station), within the leased premises, shall be in Lessee’s sole and absolute discretion.

(a) Lessee agrees that if Lessee does not elect to construct and operate a Fuel Station within the leased premises within 24 months of the date of execution of this First Amendment, thereafter Lessee agrees to work in good faith with Lessor so that Lessor, if Lessor desires, may designate an area (“Pad Site”) of reasonable size and location within the leased premises, for Lessor to construct and lease such Pad Site to a third party for a use permitted by the ECR; provided, however, (A) Lessee’s minimum annual rent shall be reduced fairly and justly to compensate Lessee for relinquishing and turning the Pad Site over to Lessor, (B) should Lessor desire to obtain the Pad Site at a time subsequent to 24 months after the date of execution of this First Amendment, Lessee shall not previously have notified Lessor of Lessee’s election to construct a Fuel Station within the leased premises (whether Lessee’s notification comes before or after expiration of the 24th month after execution of this First Amendment), (C) under no circumstances shall the Pad Site be used or operated for sales or services in competition with the sale(s) and/or services by Lessee or others from or out of the leased premises [including, without limitation, the sales of food, videos, pharmacy products (including prescription drugs), books, flowers or floral products, or a vehicle fuel station, should Lessee then be operating a vehicle fuel station, within the Shopping Center but outside of the leased premises], and (D) under no circumstances shall the parking or other uses of a business on the Pad Site interfere with Lessee’s parking requirements or otherwise impede the operations of Lessee from or out of the leased premises.

(b) If Lessee elects to construct and operate a Fuel Station within the leased premises, Lessee agrees that Lessor shall be given the first opportunity to provide the funds sufficient for Lessee to construct the Fuel Station building and other improvements to be used by Lessee in connection with sales of gasoline and other related items from the Fuel Station. The first opportunity to provide the necessary funds shall be offered by Lessee to Lessor as follows:

(i) Lessee will notify Lessor (“Lessee’s Offer”) of Lessee’s desire to construct and operate a Fuel Station within the leased premises. The Lessee’s Offer will provide Lessor with an estimate of the costs for construction of the building and other improvements (not to exceed US \$500,000), the anticipated date for commencement of construction of the Fuel Station, and an offer to lease the Fuel Station building and

other improvements from Lessor should Lessor elect to accept the offer and provide financing for the construction.

(ii) Lessor must respond to Lessee's Offer within 20 days after the Lessee's Offer is delivered to Lessor. A failure by Lessor to timely respond shall be deemed to be a rejection of Lessee's Offer.

(iii) If Lessor rejects Lessee's Offer, then Lessee shall thereafter be entitled to obtain funds for the Fuel Station building and other improvements from any other person selected by Lessee.

(iv) If Lessor accepts Lessee's Offer, then Lessee and Lessor will execute a fuel station lease (the "New Lease") covering the fuel station building and other improvements. The New Lease will contain the following:

--have a date by which Lessor must deliver the funds to Lessee for construction of the Fuel Station building and other improvements (Should Lessor fail to deliver the funds to Lessee by the agreed date, then Lessee may be entitled to obtain funds for the Fuel Station from any other person selected by Lessee.)

--have annual rent equal to the actual amount of funds provided by Lessor (but not exceeding US\$500,000 multiplied by 10.5 % per year, payable in substantially equal monthly installments

--have a lease term that runs contemporaneously with the Supermarket Lease (including option or renewal terms)

--contain reasonable indemnification of Lessor for contamination of the lease premises from Hazardous Materials

--permit Lessee to assign or sublet the New Lease and Fuel Station without consent of the Lessor so long as Lessee remains liable under the New Lease

--be cross-defaulted with the Supermarket Lease unless the New Lease previously has been assigned to a third party by Lessee

--provide that Lessee must remove the Fuel Station, underground tanks and other improvements upon termination of the New Lease unless otherwise instructed not to do so by Lessor

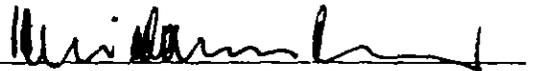
--contain other covenants, agreements, and provisions consistent with the Supermarket Lease, as amended."

8. No Other Amendments or Modifications.

The Lessee and Lessor agree that except as modified in this First Amendment, there are no other amendments, modifications or changes to the Supermarket Lease.

EXECUTED IN MULTIPLE ORIGINALS as of the day first above written.

LESSOR:


WERNER KINDERMANN,
an individual

LESSEE:

FURR'S SUPERMARKETS, INC.,
a Delaware corporation

By 
Its: SEVP.

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