UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO
ALBUQUERQUE

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In re	)	Chapter 11
	)	
FURR'S SUPERMARKETS, INC.,	)	
	)	Case No. 11 01-10779 SA
Debtor.	)	
	)	

FINOVA CAPITAL CORPORATION'S OBJECTION TO DEBTOR'S NOTICE RELATING TO THE §365(f)(2) ADEQUATE ASSURANCE REQUIREMENT FOR ASSIGNMENT OF EQUIPMENT LEASES, LEASE ESTOPPEL, AND OF FINAL HEARING

FINOVA Capital Corporation ("FINOVA"), for its Objection to the Debtor's Notice Relating To The §365(f)(2) Adequate Assurance Requirement for Assignment of Equipment Leases, Lease Estoppel, And Of Final Hearing (the "Notice"), states as follows:

1. FINOVA objects to Debtor's Notice to assign certain portions of FINOVA's lease to third-parties to the extent that the Debtor seeks to assign the lease without complying with §365 of the Bankruptcy Code. First, the Debtor attempts to make a partial assumption and assignment of a multi-store equipment lease which is prohibited under §365. Second, the Debtor's Notice provided FINOVA with woefully inadequate information and time to evaluate whether the prospective assignees can provide the required adequate assurance of future performance. Third, FINOVA objects to the Debtor's Notice on the ground that the Notice did not contain a complete copy of the FINOVA lease.

2. Pursuant to that certain Equipment Lease No. 5645900 dated December 29, 1995 by and between the Debtor and FINOVA, Master Equipment Lease Schedule No. C060700101 dated as of December 4, 1997, Master Equipment Lease Schedule No. C022200301 dated as of November 1, 1999 and Master Equipment Lease Schedule No. C02220011 dated as of August

Lease with FINOVA. The Debtor is attempting to assume a portion of an unexpired lease based on the location of the equipment rather then on the terms of the contract. The Bankruptcy Code does not provide authority for the Debtor to "cherry pick" the particular provisions of a contract it wishes to assume or reject. See, e.g., In re Nat'l. Gypsum, 208 F.3d 498, 506 (5th Cir. 2000); Cottman Transmissions, Inc. v. Holland Enters., Inc. (In re Holland Enters., Inc.), 25 B.R. 301, 302-303 (E.D.N.C. 1982). Thus, the Debtor cannot pick and chose the particular pieces of equipment it wants to continue to use irrespective of the Lease terms.

8. In the alternative, even if this Court were to allow the Debtor to assume and assign less then the entire Lease, which FINOVA denies it has the ability to do, there is no authority which would allow the Debtor to assume and assign part of a lease schedule. According to the Debtor's records, the equipment leased pursuant to FINOVA's Master Equipment Lease Schedule No. C022200301 is located at store Nos. 811, 862, 881, 936 and 944; the equipment leased pursuant to FINOVA's Master Equipment Lease Schedule No. C0607001 is located at store No. 952; and the equipment leased pursuant to FINOVA's Master Equipment Lease 5645900 is located at store Nos. 932, 934, 936 and 950. At a minimum, the Code requires that the Debtor assume each lease schedule in its entirety. Therefore, if the Debtor desires to assign the equipment leased from FINOVA at store Nos. 881, 934 936 and 952, the Debtor must fully assume Schedules C022200301, C0607001 and 5645900. FINOVA is unaware of any authority under § 365 which would allow the Debtor to make a partial assumption based on equipment location rather than on the terms of the lease.

9. Moreover, FINOVA has been unable to determine from the paucity of information contained in the Notice whether Newcorp or Big 8 Foods has the financial wherewithal to provide adequate assurance of future performance. In the four business days

since receiving the Notice, FINOVA has begun to diligently investigate the financial capabilities of Big 8 Foods and Newcorp. However, four business days has been an insufficient amount of time to obtain and review the documentation from the necessary parties and to fully investigate the potential assignment. Additional documenation is particularly important with respect to any assignment to Newcorp which, as its name suggests, is a startup and has no business history. FINOVA cannot evaluate whether Newcorp can provide adequate assurance of future performance without reviewing a proforma or other documentation concerning its capitalization.

10. Finally, FINOVA objects to the Debtor's Notice because the documents attached as Nos. 82-170 do not represent a complete copy of the Lease. The Lease is made up of Equipment Lease No. 5645900 dated December 29, 1995 by and between the Debtor and FINOVA, Master Equipment Lease Schedule No. C060700101 dated as of December 4, 1997, Master Equipment Lease Schedule No. C022200301 dated as of November 1, 1999 and Master Equipment Lease Schedule No. C02220011 dated as of August 29, 1998.

WHEREFORE, FINOVA CAPITAL CORPORATION respectfully requests that this Court enter an Order denying Debtor's Motion to reject part of FINOVA's Lease and for such other and further relief as this Court deems just and appropriate.

Dated: August 1, 2001

FINOVA CAPITAL CORPORATION

By: _____

Charles P. Schulman (#6196461)
Allen. J. Guon (#6244526)
Sachnoff & Weaver, Ltd.
30 South Wacker Drive, Suite 2900
Chicago, IL 60606
Telephone: (312) 207-1000
Facsimile: (312) 207-6400

CERTIFICATE OF SERVICE

I, Allen J. Guon, hereby certify that I served a copy of the foregoing FINOVA Capital Corporation's Objection to Debtor's Notice Relating to the §365(f)(2) Adequate Assurance Requirement for Assignment of Equipment Leases, Lease Estoppel, and of Final Hearing on the following:

Robert H. Jacobvitz
Jacobvitz, Thuma & Walker P.C.
Via Facsimile 505-766-9287

Robert H. Jacobvitz
Jacobvitz, Thuma & Walker P.C.
500 Marquette, NW, Suite 650
Albuquerque, New Mexico 87102
Via Federal Express

Stephen J. Lubben
Skadden, Arps, Slate, Meagher & Flom LLP
Via Facsimile 213-687-5600

by depositing a copy of same in the Federal Express mail and via facsimile.

Allen J. Guon