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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW MEXICO

In Re:

FURR'S SUPERMARKETS, INC.,

Debtor.

No. 11 - 01 - 10779- SA

**OBJECTION OF WEINGARTEN REALTY INVESTORS TO  
DEBTOR'S NOTICE OF PROPOSED CURE AMOUNTS**

Weingarten Realty Investors ("Weingarten"), a creditor and party in interest in the above styled and numbered case, through its counsel of record, Butt Thornton & Baehr PC, hereby objects to the Debtor's Notice of Proposed Cure Amounts, as follows:

1. Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code on February 8, 2001. Debtor continues in possession of its property and operation of its business as debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108.

2. Weingarten is the lessor under three unexpired leases of non-residential real property, as follows:

A. Weingarten Realty Investors is the Lessor under the Shopping Center Lease between La Cuesta Limited Partnership, lessor, and Safeway Stores, Incorporated, lessee, dated July 22, 1983, and Short Form Lease dated July 25, 1983, as modified by First Shopping Center Lease Modification Agreement dated March 8, 1984 and assigned to Furr's, Inc., as lessee, by the Second Shopping Center Lease Modification Agreement dated October 29, 1987,

521

and assigned to Weingarten Realty Investors, as lessor, on March 31, 1995. The leased premises are located at Wyoming Mall, 2280-B, Wyoming N.E., Albuquerque, New Mexico.

On information and belief, the supermarket operated at the leased premises is known as debtor's store #878. The rent obligations of debtor are set out in paragraph 2 of the Shopping Center Lease. Under paragraph 27, debtor is also obligated to pay a pro-rata share of common area assessments. Debtor is similarly obligated to pay a pro-rate share of taxes under paragraph 26 of the Shopping Center Lease.

B. Weingarten is also the lessor Shopping Center Lease between Dale Bellamah Land Co., Inc., as lessor and Safeway Stores, Incorporated, as lessee dated July 29, 1975, as modified by Lease Modification Agreement dated February 9, 1976, a Second Lease Modification Agreement dated February 10, 1977, a Third Lease Modification Agreement dated May 24, 1977, a Fourth Lease Modification Agreement dated June 9, 1978, and a Fifth Lease Modification Agreement dated June 23, 1980. The lease was assigned to Furr's, Inc., as lessee by the Assignment and Assumption Agreement between Safeway Stores and Furr's, Inc., dated October 29, 1989. The leased premises are located at North Towne Shopping Center, 5901-N Wyoming N.E., Albuquerque, New Mexico, but is listed in the Third Party Notice as being located at 5815 Wyoming NE, Albuquerque, New Mexico.

On information and belief, the supermarket operated by the debtor at the leased premises is referred to as debtor's store #886. Paragraph 30 of the Shopping Center Lease limits the use of the leased premises to use for a general mercantile business. Under Paragraph 13, the lease may only be assigned to another grocery supermarket operator who operates a chain of not less than three other supermarkets. Debtor's rent obligations are as set forth in paragraph 2 of the

Shopping Center Lease. In addition, under paragraph 27, debtor is obligated to pay a pro-rata share of common area assessments and, under paragraph 26, to pay a pro-rata share of taxes.

C. Weingarten is the lessor under a Shopping Center Lease and Corrected Original Lease between Coronado Hills Shopping Center, Inc., as lessor and Safeway Stores, Incorporated, as lessee, dated June 19, 1959, as modified by the Addendum dated April 13, 1960, the Lease Modification Agreement dated August 16, 1962, the Lease Modification Agreement dated August 27, 1963, Lease Modification Agreement dated March 7, 1973, Lease Modification Agreement dated August 2, 1973, Lease Modification Agreement and Addenda dated May 27, 1976, Lease Modification Agreement dated February 24, 1977, and Lease Modification Agreement dated July 30, 1979. The lease was assigned to Furr's, Inc., as lessee, by Assignment and Assumption Agreement dated October 29, 1987, and to Furr's Supermarkets, Inc., as lessee, by Assignment and Assumption of Real Property Lease dated March 11, 1991. The leased premises are located at Coronado Hills Shopping Center, 6021 N. Mesa, El Paso, Texas.

On information and belief, the supermarket operated by debtor at the leased premises is known as debtor's store # 947. Debtor's rent obligations under the Supermarket Lease are set out in paragraph 2 of the February 24, 1977 Lease Modification Agreement. Under the February 24, 1977 Lease Modification Agreement, debtor is also obligated to pay a pro-rata share of common area assessments, and, under the July 30, 1979 Lease Modification Agreement, to pay a modified pro-rata share of property taxes.

3. Section 365(a) of the Bankruptcy Code provides for the assumption by the debtor-in-possession, subject to court approval, of any executory contract or unexpired lease of the Debtor. One of the important limitations on the Debtor's right to assume a lease is the Debtor's obligation to cure any default under the lease. Section 365(b)(1) provides that any losses or

defaults existing at the time will be satisfied either through a timely cure or through reasonable assurances of future payments.

4. The Debtor's Notice does not provide for cure of all defaults under the Weingarten leases. The Debtor's Schedule "B" attached to the Notice correctly states the pre-petition default of rent under the leases and the pre-petition 2000 annual taxes. However, Schedule "B" incorrectly specifies the amount of common area maintenance ("CAM") adjustments. Further, Schedule "B" of the Notice, incorrectly specifies the Debtor's default in its obligations to reimburse Weingarten for its portion of the estimated 2001 property taxes.

5. In addition, Weingarten does not provide for payment of outstanding post-petition amounts owed under the Leases. Rent for the month of August, 2001 has not been paid and is now due. Further, although the Court has approved assumption and assignment of the Coronado Hills Shopping Center lease for Debtor's store # 947, no assumption and assignment has been approved of the North Towne Shopping Center and Wyoming Mall leases for Debtor's stores #878 and #886. For the leases on Debtor's stores # 878 and # 886, rent, CAM and pro rata 2001 taxes in similar amounts will come due in each following month until the assumption and assignment of the leases, if any, are approved and the proposed assignee takes possession.

6. The total cure amounts, to date, claimed by Weingarten, are set out in Exhibit A to this Objection.

Wherefore, Weingarten Realty Investors respectfully requests the Court condition approval of any assumption and assignment of the leases upon payment to Weingarten by Debtor of the amounts specified in Exhibit A to this Objection plus any additional amounts that may accrue after the date of this Objection.

Respectfully submitted on this 13th day of August, 2001.

BUTT THORNTON & BAEHR PC

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I hereby certify that I served  
a true copy of the foregoing  
pleading on this 13th day of  
August, 2001, to the following:

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Emily A. Franke  
Emily A. Franke

*In re Furr's Supermarkets, Inc.*  
Weingarten Realty Investors

**Schedule of Cure Amounts**  
(As of August 8, 2001)

<p><b>Debt Acknowledged by Debtor:</b></p> <p>2000 Annual Taxes \$18,231.54            Min. &amp; Add'l Rent (Mar. '01) <u>3,060.28</u>            Subtotal \$21,291.82</p> <p><b>Plus Additional Amounts Owed:</b></p> <p>Additional Rent (April 2001) 17.00            Min. &amp; Add'l Rent (Aug. '01) 12,241.14            Less: 1999 CAM Credit &lt; 7,396.48 &gt;            2000 CAM Credit &lt; 7,396.48 &gt;            Est. 2001 CAM Credit &lt; 4,930.98 &gt;            Subtotal &lt; \$7,465.80 &gt;</p> <p><b>TOTAL CURE</b> <u>\$ 13,826.02</u></p>	<p><b>Debt Acknowledged by Debtor:</b></p> <p>2000 Annual Taxes \$15,552.87            Min. &amp; Add'l Rent (Mar. '01) <u>2,060.99</u>            Subtotal \$ 17,613.86</p> <p><b>Plus Additional Amounts Owed:</b></p> <p>Min. &amp; Add'l Rent (Aug. '01) 8,244.00            Est. 2001 Taxes <u>10,368.58</u>            Subtotal \$18,612.58</p> <p><b>TOTAL CURE</b> <u>\$36,226.44</u></p>	<p><b>Debt Acknowledged by Debtor:</b></p> <p>2000 Annual Taxes \$27,098.31            2000 CAM Rebill 7,471.35            Min. &amp; Add'l Rent (Mar. '01) <u>5,181.25</u>            Subtotal \$39,750.91</p> <p><b>Plus Additional Amounts Owed:</b></p> <p>Min. &amp; Add'l Rent (Aug. '01) 20,725.00            Est. 2001 Taxes 18,065.54            Est. 2001 CAM <u>4,980.90</u>            Subtotal \$43,771.44</p> <p><b>TOTAL CURE</b> <u>\$83,522.35</u></p>
<p><b>TOTAL OWING TO WEINGARTEN REALTY INVESTORS</b> \$133,543.81</p>		

