

UNITES STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

IN RE:)
)
FURR'S SUPERMARKETS, INC.,) Case No. 01-10779-SA
)
Debtor.) Chapter 11

FIRST-CLOSING
FINAL FIRST-ORDER SUPPLEMENTING FINAL ORDER (1) AUTHORIZING DEBTOR
TO OBTAIN SECURED FINANCING, (2) GRANTING ADEQUATE PROTECTION AND
(3) GRANTING OTHER RELIEF, TO PERMIT SHORT-TERM FINANCING
AND USE OF CASH COLLATERAL

Upon the Motion for Order Authorizing use of Cash Collateral, Including Request for an Emergency Hearing to Avoid Immediate and Irreparable Harm, filed September 6, 2001, (the "Motion") filed by Furr's Supermarkets, Inc., debtor and debtor-in-possession (the "Debtor"), pursuant to which the Debtor seeks the entry of an order authorizing it to use the cash collateral of, and borrow money from, Metropolitan Life Insurance Company ("MetLife"), Fleet Capital Corporation ("Fleet"), Bank of America, N.A. ("BofA") and Heller Financial, Inc. ("Heller"), for itself as a Lender and as agent for the Lenders (collectively, MetLife, Fleet, BofA and Heller shall be referred to as the "Lenders"), and to give security therefor; the Court having examined the Motion and the Final Order (1) Authorizing Debtor to Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief dated March 14, 2001 (the "Final Financing Order");¹ the Court having heard the statements of counsel and the evidence in support of and in opposition to the Motion at a hearing before the Court (the "Hearing"); on September 6, 2001 the Debtor having served a copy of the Motion and notice of the emergency hearing thereon on the persons on the limited mailing list maintained in connection with this

¹ Capitalized terms used herein and not otherwise defined have the meanings assigned in the Final Financing Order.

case; on September 19, 2001 the Debtor having served notice of the final hearing on the Motion on the persons on the limited mailing list maintained in connection with this case ; and it appearing to the Court that (i) the Court has jurisdiction to enter this Order pursuant to 28 U.S.C. §§157(b)(2) and 1334, (ii) this is a core proceeding as defined in 28 U.S.C. §157(b)(2) and (iii) notice of the Motion and the emergency and final Hearings were adequate under the circumstances;

THE COURT FINDS, IN ADDITION TO THE ORAL FINDINGS OF FACT AND CONCLUSIONS OF LAW ANNOUNCED PURSUANT TO BANKRUPTCY RULE 7052, THAT:

A. The Termination Date of the DIP Facility has occurred (and, if not already deemed declared and/or noticed, is hereby deemed declared and noticed) as a result of, among other things, the sale of substantially all of the Debtor's assets to Fleming Companies, Inc. ("Fleming") pursuant to the Order (i) Approving Asset Purchase Agreement with Fleming Companies, Inc., (ii) Authorizing the Sale of All or Substantially All of the Debtor's Operating Assets and the Transactions Contemplated by Asset Purchase Agreement, and (iii) Granting Related Relief dated July 3, 2001 (the "Fleming Sale Order").

B. On August 31, 2001, the Debtors received \$82,604,042 net of prorations from Fleming (the "Sale Proceeds"). Of the Sale Proceeds, \$7,658,562 was utilized to pay equipment buy-outs, \$3,800,619 was utilized to pay liquor wholesalers, \$1,256,121 was utilized to pay rent cures, \$1,532,395.50 is reserved for claims of Texas taxing authorities (to the extent of any allowed claims prior to the interests of the Lenders), \$500,000 is reserved for the disputed claims of Pinnacle Logistics, Inc. and Countrywide Logistics, Inc. (to the extent of any allowed secured claims prior to the interests of the Lenders); \$2,000,000 is reserved as the Escrow

Amount under the Asset Purchase Agreement between Debtor and Fleming Companies, Inc., dated June 25, 2001, as amended, \$56,400 has been paid over for union dues; \$750,000 is reserved for any contributions due and owing by the Debtor in September 2001 to the New Mexico United Food and Commercial Workers' Union and Employer's Health and Welfare Fund for hour worked in August 2001 (if and to the extent such claim is allowed and the Court orders the claim to be paid); \$10,000 is reserved for payment of U.S. Trustee fees for the third quarter of 2001; \$1,500,000 is reserved for the success fee (the "Success Fee") which is due and payable to George Golleher and Greg Mays (together, the Chair and Vice Chair") pursuant to a prior order of the Court, \$50,000 is reserved for a chapter 7 trustee; and \$1,500,000 is reserved for Peter J. Solomon & Co, without prejudice to any claim it may make as to the amount owed and to be paid; and the remaining \$62,049,944.50 (the "Remaining Proceeds") is deposited in Blocked Accounts in the dominion and control of Heller. In addition, from and after August 31, 2001, the Debtor has recovered, and the Debtor anticipates that it will continue to recover, additional proceeds from the disposition of assets ("Additional Proceeds;" collectively with the Remaining Proceeds, the "Aggregate Proceeds").

C. The Debtor and the Lenders agree that the Aggregate Proceeds (excluding Avoidance Action recoveries, if any) constitute cash collateral of the Lenders. The Official Committee of Unsecured Creditors asserts that some portion of the Aggregate Proceeds might not constitute cash collateral of the Lenders.

D. The Debtor desires that the Lenders make available to it post-petition credit and/or cash collateral for weeks ended September 14, 2001, September 21, 2001 and September 28, 2001 solely to fund the types and amounts of itemized expenditures set forth in the Budget attached to this Order (the "Short-Term Budget"). Lenders have not consented to the

use of cash collateral other than as set forth herein and the Debtor has no other source of financing.

E. The terms of this Order have been negotiated at arms-length with all parties represented by experienced counsel, are fair and reasonable under the circumstances, are for reasonably equivalent value and fair consideration, and are in good faith as that term is used in section 364(e) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the “Bankruptcy Code”). Accordingly, the Lenders, in making advances pursuant to this Order, are entitled to the protections described in section 364(e) of the Bankruptcy Code.

THEREFORE IT IS HEREBY ORDERED THAT:

1. The Aggregate Proceeds shall be provisionally paid and applied, prior to a determination of the Lenders’ entitlement to such funds, subject to disgorgement pursuant to applicable law, if any, and as set forth below, as follows: first, Aggregate Proceeds from the sale of real or personal property of the Debtor that constitutes DIP Collateral, but not Pre-Petition Senior Collateral or Pre-Petition ML Collateral, in respect of which valid, perfected and unavoidable prepetition security interests in favor of any of the Lenders exist, shall be applied to the DIP Indebtedness, and second, all other Aggregate Proceeds shall be applied to the Indebtedness, the Pre-Petition ML Senior Debt and the Pre-Petition Junior Indebtedness in the manner agreed among the Lenders. If the Court at the request of any party in interest should determine that the Lenders for any reason are not entitled to retain any portion of the Aggregate Proceeds paid to the Lenders pursuant to this paragraph 1, the Lenders promptly shall return such portion to the estate as ordered by the Court in a contested matter after “notice and a hearing” (as defined in Bankruptcy Code § 102(1)), with no right of setoff and no right to a stay pending appeal of that portion of such order. Without limiting the foregoing, for fees and expenses the

Debtor is authorized to pay by separate order within the limits of the Carve-Out and JTW Carve Out (defined below), to the extent that available unencumbered monies are insufficient to pay such fees and expenses, the Lenders at the request of any party in interest shall return any such portion of the Aggregate Proceeds to the estate. The obligations of the Lenders under this paragraph 1 are joint and several to the extent of the monies actually received by each Lender. The Court retains jurisdiction to enforce the provisions of this paragraph 1 in a contested matter in the bankruptcy case. The Lenders shall have the right to claim, apply and/or allocate (or as the case may be to reclaim, reapply and/or reallocate at a later date in light of receipts of Additional Proceeds) in their sole discretion the payments received hereunder from either the Aggregate Proceeds or from Additional Proceeds. The decision of the Lenders may be made or remade before or after the time of any effort to seek disgorgement of funds received by them. The Lenders shall not be required to marshal receipts for the benefit of the estate or any party in interest. The foregoing shall include the right of the Lenders to reclaim, reapply and/or reallocate payments at any time to ensure that the amounts financed hereunder are repaid with proceeds which would not otherwise be applied to their secured claim.

2. The Debtor is hereby authorized to borrow money from the Lenders for the weeks ended September 14, 2001, September 21, 2001 and September 28, 2001, solely to fund the types and amounts of itemized expenditures set forth in the Short-Term Budget through the week ended September 28, 2001, which the Lenders have agreed to fund (including funding of obligations for such itemized expenditures incurred on and after September 1, 2001 in accordance with the Short Term Budget that are unpaid as of the date of any default or the expiration of the Short Term Budget). As adequate protection, any amounts of Aggregate Proceeds used (other than to repay indebtedness owed to the Lenders), including all funds used

by the Debtor since the payment of the DIP Indebtedness even if used prior to the date of this Order (together with loans made pursuant to this Order, the "Advances"), shall be secured by a replacement lien (junior to any Prior Claims, ^{to} ~~including but not limited to~~ ^{and junior to} ~~any~~ ^{other} claims of Premier Distributing Company, Inc., New Mexico Beverage Company, Southern Wine & Spirits of New Mexico, and National Distributing Company if and to the extent that such claims attach to specific collateral and are ^{ultimately determined to be} ~~are~~ ^{to} prior to the liens of the Lenders against such collateral) in favor of the Lenders against all assets of the estate, and proceeds thereof, and shall be deemed to be advanced by the Lenders under the Final Financing Order and shall, notwithstanding the occurrence of the Termination Date, be treated as DIP Indebtedness under the Final Financing Order and be entitled to all the benefits thereof, including, without limitation, the security interests set forth in Section 6 thereof, and the super priority claim status and prohibition on Section 506(c) charges set forth in Section 9 thereof. In addition, Lenders are granted a security interest with all rights described above in any and all avoidance claims and any and all proceeds therefrom (the "Avoidance Action Collateral"), including but not limited to actions under Sections 544, 545, 547, 548, 549, and/or 553 and any other such types of estate recoveries, (which shall collectively be referred to herein as "Avoidance Actions") to secure the Advances, other than Advances, if any, to pay any claims presently prior to the interests of the Lenders in the Sale Proceeds or Aggregate Proceeds. The inclusion of a lien on Avoidance Actions is in addition to all rights previously held by the Lenders under the Final Financing Order.

3. Notwithstanding the occurrence of a Termination Event, Post-Petition Collections shall continue to be deposited in Blocked Accounts and applied as set forth in Section 10 of the Final Financing Order.

4. The proceeds from any recovery of the Debtor from and after the date of the payment in full of the DIP Indebtedness shall be applied to the amounts advanced pursuant to this Order, subject to the rights of the Lenders granted herein and/or in the Final Financing Order to reclaim, reapply and reallocate in respect of any monies; provided that, notwithstanding anything else in this order, the provisions of this Order grant the Lenders the right to apply Avoidance Action Collateral only to repayment of Advances, other than Advances, if any, to pay any claims presently prior to the interests of the Lenders in the Sale Proceeds or Aggregate Proceeds (without prejudice to any rights, benefits and provisions granted in favor of any of the Lenders under the Final Financing Order and related documentation, all of which rights, benefits and provisions remain extant and unlimited by this Order).

5. The provisions of this Order shall be binding upon and inure to the benefit of the Lenders, the Debtor and their respective successors and assigns to the maximum extent permissible under applicable law, including, without limitation, any trustee, examiner or responsible person appointed in this case or any subsequent Chapter 11 or Chapter 7 case.

6. The Debtor shall not, without the Lenders' prior consent, seek to modify this Order. Notwithstanding anything contained herein, if any provision of this Order is hereafter modified by Court order, such modifications shall not affect the validity of any DIP Indebtedness outstanding immediately prior to the effective time of such modification, or the validity or enforceability of any lien, priority or right authorized hereby with respect to any such DIP Indebtedness. The rights, benefits and provisions granted in favor of any of the Lenders hereunder or under the Final Financing Order and related documentation shall continue notwithstanding repayment of DIP Indebtedness.

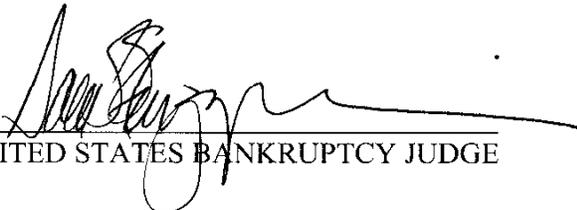
7. Each of the terms and conditions hereof constitutes a part of this Court's authorization under section 364(e) of the Bankruptcy Code, and is therefore, subject to the protections contained in section 364(e) of the Bankruptcy Code.

8. The Debtor is authorized to pay \$56,400 for union dues. ^{and \$10,000 for quarterly US Trustee fees.} The Debtor also is authorized to pay the \$750,000 Success Fee due and payable to the Chair and Vice Chair pursuant to a prior order of the Court, which shall be deemed paid from Aggregate Proceeds. The Debtor is not authorized to pay any further amounts for the Success Fee at this time. A chapter 7 trustee is authorized to use the reserved \$50,000 upon appointment. If the Court at the request of any of the Lenders should determine that the Chair and Vice Chair for any reason, consistent with the Consulting Agreements approved by the Court, are not entitled to retain any portion of the Success Fee paid to them pursuant to this paragraph 8, the Chair and Vice Chair promptly shall return such portion to the estate as ordered by the Court in a contested matter after "notice and a hearing" (as defined in Bankruptcy Code § 102(1)), with no right of setoff and no right to a stay pending appeal of that portion of such order. The Court retains jurisdiction to enforce the provisions of this paragraph 8 in a contested matter in the bankruptcy case.

9. Notwithstanding anything set forth in this Order, the Final Financing Order or the Post-Petition Loan Documents and notwithstanding the occurrence of a Termination Event (and thus a Carve-Out Event) under the Final Financing Order, Jacobvitz, Thuma & Walker, P.C. ("JTW"), the Debtor and the Lenders have agreed that to the extent there are insufficient funds available under Carve-Out set forth in Section 3 of the Final Financing Order to pay JTW for their unpaid professional fees and expenses approved by this Court and receipts tax thereon (the "JTW Compensation"), there shall be carved-out of the DIP Collateral, the Pre-Petition Senior Collateral and the Pre-Petition ML Collateral (the "JTW Carve-Out") an amount

sufficient to pay JTW the JTW Compensation (i) for services rendered and costs incurred prior to August 31, 2001, and (ii) for services rendered and costs incurred on and after August 31, 2001 to the extent of a maximum of \$50,000 per month for fees, plus costs and applicable tax, which amounts shall be a cumulative total month-to-month until the first to occur of (x) the date that the Debtor's authority to use cash collateral ceases, if such authority is not thereafter resumed with the Lenders' consent, (y) December 31, 2001 (unless the Lenders in their sole discretion consent to extend such date), or (z) any conversion of this case to a case under chapter 7. The JTW Carve-Out shall be for the benefit of JTW only, and does not constitute an express or implied consent by the Lenders to pay any other administrative expenses, out of the DIP Collateral, the Pre-Petition Senior Collateral, the Pre-Petition ML Collateral or otherwise. Notwithstanding the foregoing, the JTW Carve-Out shall not apply to any JTW Compensation charged to object to any Lender's claims, challenge any lien of any Lender, or bring any avoidance or other action against any Lender, the DIP Collateral, the Pre-Petition Senior Collateral or the Pre-Petition ML Collateral, including, without limitation, formal or informal discovery or investigation in anticipation of bringing any such action. The Lenders expressly acknowledge that JTW's client is and shall remain the Debtor, and JTW's loyalties, duties and responsibilities shall remain the same after entry of this Order as before. JTW has represented to the Lenders that the total JTW Compensation charged for services rendered between February 8, 2001 and August 30, 2001 is \$402,852.21.

IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Submitted by:

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I hereby certify that a true and correct copy
of the foregoing was either electronically
transmitted, faxed, delivered or mailed to
the listed counsel and parties on:

SEP 26 2001

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*Approved
Premier
for Helicovera*

*Approved
Zaid Kollie
Premier Distributing
Company, Inc.*

*Approved
Attorney for MetLife*

*Approved as to form only
William F. Davis
for ucc*

Rev E [Signature], Assistant V.S. TRUSTEE

POST CLOSING OPERATING BUDGET

	Wk End <u>09/08/01</u>	Wk End <u>09/15/01</u>	Wk End <u>09/22/01</u>	Wk End <u>09/29/01</u>	Wk End <u>10/06/01</u>	Wk End <u>10/13/01</u>
HEADCOUNT	72	45	41	36	23	23
PAYROLL						
SALARIES	65.0	49.0	46.0	42.0	32.0	32.0
BENEFITS/TAXES	5.0	3.9	3.7	3.4	2.6	2.6
TOTAL PAYROLL	<u>70.0</u>	<u>52.9</u>	<u>49.7</u>	<u>45.4</u>	<u>34.8</u>	<u>34.6</u>
MAIL FLOAT	(34.0)	12.0	12.0	12.0	-	-
SUBTOTAL	<u>36.0</u>	<u>64.9</u>	<u>61.7</u>	<u>57.4</u>	<u>34.8</u>	<u>34.6</u>
CONSULTING FEES	5.0	5.0	8.6	8.6	8.6	8.6
RENT	-	75.0	-	-	25.0	-
OPERATING COSTS						
CHAIRMAN/VICE CHAIRMAN	-	-	-	50.0	-	-
DATA CENTER	26.5	14.0	14.0	14.0	14.0	10.0 (E)
UTILITIES	3.0	3.0	3.0	3.0	2.0	2.0
TELEPHONE	2.2	2.2	2.2	2.2	2.2	2.2
SUPPLIES	2.8	1.9	1.9	1.9	0.5	0.5
HOUSEKEEPING	0.5	0.5	0.5	0.5	0.2	0.2
SECURITY	0.5	0.5	0.5	0.5	0.3	0.3
POSTAGE	0.8	0.8	0.8	0.8	0.5	0.5
MISC EXPENSE	5.6	5.6	5.6	5.6	5.6	5.6
TAXES	-	-	-	-	-	-
TOTAL OPERATING COSTS	<u>41.9</u>	<u>28.5</u>	<u>28.5</u>	<u>78.5</u>	<u>25.3</u>	<u>21.3</u> (C)
3RD PARTY SERVICES	-	-	290.0 (B)	-	-	-
CARRYING/CLOSURE COSTS—WHS	-	25.0	25.0	25.0	104.0	10.0
	<u>82.9</u>	<u>198.4</u>	<u>413.8</u>	<u>169.5</u>	<u>197.5</u>	<u>74.5</u>
SUB TOTAL						
CUM	<u>82.9</u>	<u>281.3</u>	<u>695.0</u>	<u>864.5</u>	<u>1,062.0</u>	<u>1,136.5</u>
PAYROLL FOR TIME PRIOR TO 8/31	70.0	1,194.0	-	-	-	-
CHECKS MAILED PRIOR TO 8/31:						
ACCOUNTS PAYABLE	350.0 (A)	-	-	-	-	-
GROUP MEDICAL	300.0	150.0	-	-	-	-
PUBLIC LIABILITY	15.0	5.0	5.0	-	-	-
TOTAL CHECKS MAILED	<u>665.0</u>	<u>155.0</u>	<u>5.0</u>	-	-	-
	<u>735.0</u>	<u>1,349.0</u>	<u>5.0</u>	-	-	-
SUB TOTAL						
CUM	<u>735.0</u>	<u>2,084.0</u>	<u>2,089.0</u>	<u>2,089.0</u>	<u>2,089.0</u>	<u>2,089.0</u>
GRAND TOTAL	<u>817.9</u>	<u>1,547.4</u>	<u>418.8</u>	<u>169.5</u>	<u>197.5</u>	<u>74.5</u>
CUM	<u>817.9</u>	<u>2,365.3</u>	<u>2,784.0</u>	<u>2,953.5</u>	<u>3,151.0</u>	<u>3,225.5</u>

EXHIBIT

A

NOTES:

(A) Accounts Payable includes the following components:

Outstanding Checks	350.0	
Open Payables	50.0	
Unbilled Services	<u>400.0</u>	(D)
	800.0	

(B) Functions requiring the involvement of 3rd parties include.

<u>3rd PARTY</u>	<u>SERVICE</u>	<u>AMOUNT</u>
PAYDAY, INC.	W-2 FORMS	25,000
CIGNA	401(k) PLAN ADMIN/TERMINATION	20,000
MORNEAU SOBECO	GROUP MEDICAL/LIFE/DISABILITY	5,000
AUTHUR ANDERSON LLP 2000, 2001, 2002	BENEFITS PLANS - AUDITS & TAXES	120,000
IRON MOUNTAIN 2 yrs	DATA STORAGE AND DESTRUCTION	45,000
MEYNER'S & CO 2000, 2001, 2002	CORPORATE TAX RETURNS	65,000
LINDA AIKIN	LIQUOR LICENSES	10,000
		<u>290,000</u>

(C) No payments required during period represented.

(D) Unbilled Services include items such as, final utility billings for all stores, inventory services for sale of stores, etc

(E) Data Center includes cost of hardware, operating systems, software licenses and support for systems required to wind down business and collect remaining proceeds including: OMI (buying and warehousing system) and LAWSON (Payroll, Accounts Receivable, Accounts payable).