

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779 SA
Chapter 11

Debtor.

**ORDER APPROVING PROCEDURE
RELATING TO THE §365(b)(1) CURE AND ADEQUATE ASSURANCE
REQUIREMENTS FOR ASSUMPTION OF LEASES**

This matter came before the Court for hearing on July 20, 2001 at 10:30 a.m. on the Amended Motion for Order Approving Procedure Relating to the §365(b)(1) Cure and Adequate Assurance Requirements for Assumption of Leases (the "Amended Motion"), filed July 17, 2001. Counsel entered their appearances at the hearing as noted on the record. The Court finds that on July 13, 2001 notice of this hearing and of the Motion for Order Approving Procedure Relating to the §365(b)(1) Cure and Adequate Assurance Requirements for Assumption of Leases, filed July 16, 2001, were served on the parties in interest set forth in a proof of service, filed July 16, 2001; that on July 16, 2001, the amended motion was served on the parties in interest set forth in the proof of service, filed July 17, 2001; and that the notice was appropriate and sufficient.

The Court having heard argument of counsel; having taken judicial notice of the prior proceedings in this case; and having determined that the relief granted by this order is in the best interest of creditors and the estate, would not pose an undue hardship on lessors of real property or equipment, and should be granted;

IT IS ORDERED, as follows:

1. Capitalized terms in this Order, not otherwise defined, are as defined in the Asset Purchase Agreement dated June 25, 2001 (the "APA") between the Debtor and Fleming Companies, Inc. approved by the order approving the sale of substantially all of Debtor's assets entered July 3, 2001.

2. The Court approves the following procedure with respect to the determination by the Court whether Debtor has satisfied the requirements under Bankruptcy Code §365(b)(1) for assumption of Leases (defined in the APA as limited to interests in Leased Real Property) and Equipment Leases (together, "Unexpired Leases") relating to Store Properties:

(a) Not later than two business days after the expiration of the 30-Day Period (*i.e.* by August 6, 2001), Debtor will serve a notice upon all lessors of Unexpired Leases (and their counsel of record, if any), by overnight courier service (the "Cure Amount Notice"), in substantially the form attached hereto as Exhibit "A." The Cure Amount Notice also will contain information for the lessor to contact a representative of the Debtor to discuss cure issues.

(b) Except for cure amounts to which the Debtor and lessor have agreed upon and Unexpired Leases where the leased property is located only at Store Properties that the Cure Amount Notice states were carved out from the purchase on or before August 2, 2001, within seven (7) days after the lessors' receipt of a the Cure Amount Notice, any lessor who objects to any proposed cure amounts ("Proposed Cure Amounts") set forth in Schedule A to the Cure Amount Notice (which will be enclosed with such Notice), will transmit to counsel for the Debtor, by email (to rjacobvitz@jtwlawfirm.com, with a copy to slubben@skadden.com) or by facsimile or by facsimile (to Robert H. Jacobvitz, 505-766-9287(fax), with a copy to Stephen J.

Lubben, (213) 687-5600 (fax)), or by overnight mail (to Jacobvitz, Thuma & Walker P.C. 500 Marquette, NW, Suite 650, Albuquerque, New Mexico 87102), any objections setting forth the amount the lessor asserts is required for the Debtor to provide a cure under Bankruptcy Code §365(b)(1), and will file the objections promptly thereafter. Any intervening weekends and legal holidays shall be included in the computation of the 7-day period.

(c) If such an objection is filed and served within the seven (7) day period specified in paragraph 2(b), the Court will hold a final hearing, on short notice to the Debtor, lessor in question, the DIP lenders, Committee and United States Trustee, to determine the cure amount required by Bankruptcy Code §365(b)(1) as a condition to assumption of the Unexpired Lease(s).

(d) If such an objection is not filed and served within the seven (7) day period specified in paragraph 2(b), the lessor in question shall be deemed to have waived any objection to the proposed cure amount.

(e) The Debtor has asserted that it believes that some of the Unexpired Leases, specifically certain Equipment Leases, are not executory contracts or unexpired leases subject to the requirements of section 365 of the Bankruptcy Code but instead are non-executory, secured lending arrangements (the "Secured Leases"). The Cure Amount Notice for these leases will indicate a cure amount of "N/A," and the Cure Amount Notice also will indicate a provisional proposed cure amount ("Provisional Proposed Cure Amount") that would apply only if the Court determines that an Equipment Lease the Debtor claims is a Secured Lease is subject to the requirements of section 365 of the Bankruptcy Code. Any objections by the lessor to the Provisional Proposed Cure Amount are to be served within the 7-day period specified in paragraph 2(b), and filed

promptly thereafter, and shall set forth the amount the lessor asserts is required for the Debtor to provide a cure under Bankruptcy Code §365(b)(1). The provisions of paragraphs 2(c) and (d) shall apply to any such objections.

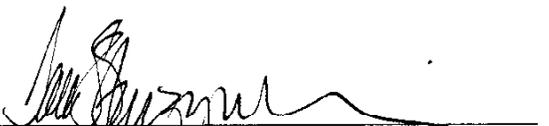
(f) All claims by the Debtor that any Equipment Lease is a secured lease will be resolved by adversary proceeding. The Debtor will propose a separate, accelerated scheduling order to govern resolution of the adversary proceeding.

(g) In addition, the Debtor may include in the Cure Amount Notices ~~for some Equipment Leases the Proposed Cure Amounts (or Proposed Provisional Cure~~
Amounts) on a store-by-store or other basis, reflecting the Debtor's proposed assignment of interests in Equipment Leases to more than one Third Party Purchaser or the assignment of interests in an Equipment Lease of less than all of the equipment covered by a particular master lease. The Debtor will then serve a memorandum of law in support of its position with the Cure Amount Notice. Any objections by the equipment lessor to (i) any of the Debtor's Proposed Cure Amounts (or Proposed Provisional Cure Amounts) on a store-by-store or other basis set forth in the Cure Amount Notice, and/or (ii) the subsequent corresponding proposed assignment of the Debtor's interests in the Equipment Leases, shall be served in the manner and in accordance with the 7-day deadline set forth in paragraph 2(b) above. If a lessor so objects, the lessor will have an additional seven days after such objection deadline (for a total of 14 days after the lessor's receipt of a Cure Amount Notice and the Debtor's memorandum of law) to serve on Debtor's counsel, by the means provided in paragraph 2(b), a memorandum of law in support of the lessor's position, which may be accompanied by supporting affidavits. The Debtor will then have an additional seven days to serve a reply, which may be accompanied by supporting affidavits. The Debtor will thereafter file the three briefs

(and any affidavits) with Court concurrently. The Debtor or lessor may request an evidentiary hearing, if such party believes there are material relevant facts in dispute. Any hearing will be held on an accelerated basis.

(h) The Debtor will provide each lessor under Equipment Leases in which Debtor proposes to assign interests to more than one Third Party Purchaser or to assign interests in less than all of the equipment covered thereby, with notice of the objection deadline and briefing schedule set forth in paragraph 2(g) by separate notice, served concurrently with the Debtor's first memorandum of law. If a lessor under such an Equipment Lease does not timely file and serve an objection to the proposed treatment of the Equipment Lease at issue, or if the lessor fails to file and serve a responding memorandum within the time described in paragraph 2(f), the lessor in question shall be deemed to have waived any objection to the Debtor's proposed treatment of the Equipment Lease and to have waived any objection that the Equipment Lease attached to the Debtor's initial memorandum of law is not a true and complete copy of such Equipment Lease.

3. Notwithstanding anything set forth above in this Order, this Order does not apply to any leases between the Debtor and General Electric Business Assets Funding Corporation. The Motion, as it relates to such leases, shall be decided by another Judge.

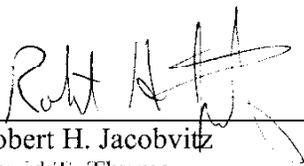

THE HONORABLE JAMES S. STARZYNSKI
UNITED STATES BANKRUPTCY JUDGE

Submitted and approved by:

Skadden, Arps, Slate, Meagher & Flom, LLP
Richard D. Levin
300 South Grand Avenue, Suite 3400
Los Angeles, California 90071-3144
(213) 687-5000

-and-

JACOBVITZ, THUMA & WALKER, P.C.

By: 
Robert H. Jacobvitz
David T. Thuma
500 Marquette, NW
Suite 650
Albuquerque, NM 87102
(505) 766-9272

Attorneys for the Debtor

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:

JUL 23 2001

Mary B. Anderson

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779 SA
Chapter 11

Debtor.

**CURE AMOUNT NOTICE, INCLUDING DEADLINE
TO OBJECT TO PROPOSED CURE AMOUNTS**

This notice is given pursuant to paragraph __ of the Order Approving Procedure Relating to the §365(B)(1) Cure and Adequate Assurance Requirements for Assumption of Leases, filed July __, 2001. This Notice applies to all leases (whether for real property or personal property, including store leases and equipment leases) that are in effect and that Debtor has not rejected in this bankruptcy case ("Unexpired Leases").

PLEASE TAKE NOTICE THAT within seven (7) days after the lessors' receipt of a this Notice, any lessor who objects to any Proposed Cure Amount or Proposed Provisional Cure Amount set forth in Schedule A to this Notice shall transmit to counsel for the Debtor, by email (to rjacobvitz@jtwlawfirm.com, with a copy to slubben@skadden.com) or by facsimile (to Robert H. Jacobvitz, 505-766-9287(fax), with a copy to Stephen J. Lubben, (213) 687-5600 (fax)), or by overnight mail (to Jacobvitz, Thuma & Walker P.C. 500 Marquette, NW, Suite 650, Albuquerque, New Mexico 87102), an objection setting forth the amount the lessor asserts is required for the Debtor to provide a cure under Bankruptcy Code §365(b)(1), and shall file the objection promptly ~~hereafter~~ **PROVIDED, HOWEVER SUCH OBJECTION REQUIREMENT AND DEADLINE**

or occupancy) where the leased property is located only at Store Properties summarized in Category 4 below, and (iii) any Equipment Leases if and to the extent that all of the equipment subject to such leases is located only at one or more Store Properties summarized in Category 4 below. **Any intervening weekends and legal holidays shall be included in the computation of the 7-day objection period.**¹

If such an objection is filed and served within the seven (7) day period specified above, the Court will hold a final hearing, on short notice to the Debtor, lessor in question, the DIP lenders, Committee and United States Trustee, to determine the cure amount required by Bankruptcy Code §365(b)(1) as a condition to assumption of the Unexpired Lease(s).

¹ Under the Asset Purchase Agreement ("APA") between Debtor and Fleming Companies, Inc. ("Purchaser"), dated August 25, 2001, approved by the Court by an order entered July 3, 2001 (the "Sale Order"), Purchaser has the right to reject (or carve out from its purchase) up to 26 of the Store Properties by giving notice within 45 days after entry of the Sale Order (*i.e.* by August 17, 2001), subject to the terms and conditions set forth in the APA.

EXHIBIT "A"

If such an objection is not filed and served within the seven (7) day period specified above, the lessor in question shall be deemed to have waived any objection to the proposed cure amount.

The attached Schedule A sets forth (i) a list of the Leases (defined as leases of interests in real property) within the Categories 1, 2, 3 and 4 described below, designating which category is applicable to each such Lease; (ii) specifying the Proposed Cure Amount or Proposed Provisional Cure Amount for each lease, as applicable, and (iii) a list of the Equipment Leases, designating the Store Property(ies) where the equipment subject to such leases is located and the Category applicable to each such Store Property.

As of August 2, 2001, the status of Purchaser's rejection of store properties is as follows:

Category 1 Store Properties for which the Debtor has received from Purchaser on or prior to August 2, 2001 a Third Party Purchaser Notice (i.e. a notice that Purchaser designates the store to be transferred directly to a third party purchaser):

<u>Store #</u>	<u>Store Location</u>	<u>Third Party Purchaser</u>
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Category 2 Store Properties that Purchaser on or prior August 2, 2001 has designated to be transferred directly to Purchaser:

<u>Store #</u>	<u>Store Location</u>
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Category 3 Store Properties that Purchaser still has the right to purchase or carve out from the purchase, as of August 2, 2001:

<u>Store #</u>	<u>Store Location</u>
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Category 4 Store Properties for which the Debtor has received from Purchaser on or prior to August 2, 2001 a Rejection Notice (i.e. a notice that Purchaser carved out the store from its purchase under the APA).

Store #

Store Location

JACOBVITZ THUMA & WALKER
a Professional Corporation

By: _____
Robert H. Jacobvitz
David T. Thuma
500 Marquette N.W., Suite 650
Albuquerque, New Mexico 87102
(505) 766-9272
(505) 766-9287 (fax)

- and -

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Avenue, Suite 3400
Los Angeles, California 90071-3144
(213) 687-5000

Attorneys for the Debtor-in-Possession

This certifies that the foregoing Notice was served by placing the Notice with an overnight courier service on August __, 2001 for delivery on August __, 2001 to the persons set forth on Exhibit "A" hereto.
