

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

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JUL 27 2001  
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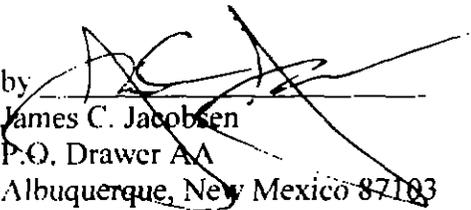
**IN RE:**  
**FURR'S SUPERMARKETS, INC.,**  
**Debtor.**

**NO. 11-01-10779 SA**

**RESPONSE OF WERNER KINDERMAN TO NOTICE RLATING 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. Store 881, by and through his attorneys Keleher & McLeod, P.A. (James C. Jacobsen) and in response to the Debtor's Notice Relating to the §365(f)(2) Adequate Assurance Requirements for Assignment of Store Leases, Lease Estoppel and of Final Hearing, received July 27, 2001, states that 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 for the extension and modification of Store 881's Lease.

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.

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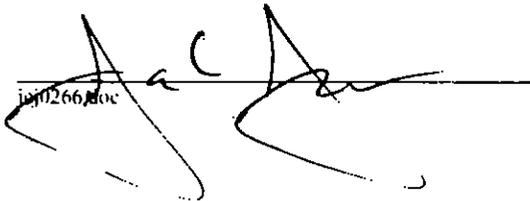
a true copy of the foregoing  
Response to:

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 3d day of August 2001.

  
j0266.doc

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 Furrs Supermarket's bank account by 3:00pm U.S. Central Standard Time no later than September 14, 2001 or else Furrs 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.

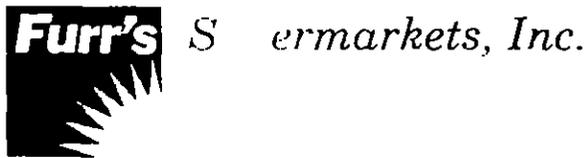
Sincerely,



Gene W. Denison  
Sr. VP  
Furrs Supermarkets, Inc.

CC: Mr. Jan Friederich  
Mr. Jim Pleasant

*Handwritten initials*



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)

<del>12/27/01 - 12/26/02</del>	4/13/02 - 4/12/03	\$ 85,693.76
<del>12/27/02 - 12/26/06</del>	4/13/03 - 4/12/07	\$ 94,263.00
<del>12/27/06 - 12/26/11</del>	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.

**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 <sup>April 13</sup> ~~December 26,~~ 2000-2001. *>*

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. *W*

Thank you very much.

FURR'S SUPERMARKETS, INC.

By: *Gene W. Demison*

Its: *Sr. VP*

GENE W. DEMISON  
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 15<sup>th</sup> 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.

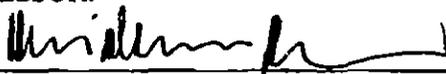
(i) Subparagraph 4(c) (relating to percentage rental) and all other references in the Supermarket Lease to percentage rental, and (ii) all of paragraph 6 of the Supermarket Lease (relating to "Gross Sales") and all other references to the Supermarket Lease to "Gross Sales," are hereby deleted in their 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:



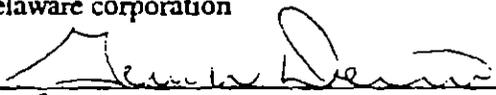
WERNER KINDERMANN,  
an individual

LESSEE:

FURR'S SUPERMARKETS, INC.,  
a Delaware corporation

By

Its:

  
SR V P

GENE W. DENISON  
SENIOR VICE PRESIDENT  
RETAIL OPERATIONS

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