

FILED

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO
ALBUQUERQUE**

at _____ o'clock ____ M

AUG 13 2001

In re

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)
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Chapter 11

United States Bankruptcy Court
Albuquerque, New Mexico

FURR'S SUPERMARKETS, INC.,

Case No. 11 01-10779 SA

Debtor.

**DECLARATION OF SCOTT PLOSHAY IN SUPPORT OF
FINOVA CAPITAL CORPORATION'S OBJECTION TO
DEBTOR'S NOTICE OF PROPOSED CURE AMOUNTS,
OBJECTION DEADLINE AND FINAL HEARING AND NOTICE
OF BRIEFING SCHEDULE AND OBJECTION DEADLINES REGARDING
DEBTOR'S STORE-BY-STORE TREATMENT OF CERTAIN LEASES**

I, Scott Ploshay, in support of FINOVA Capital Corporation's ("FINOVA") Objection to the Debtor's Notice of Proposed Cure Amounts, Objection Deadline and Final Hearing and Notice of Briefing Schedule and Objection Deadlines Regarding Debtor's Store-by-Store Treatment of Certain Leases, declare as follows:

1. I am a Credit Officer for FINOVA. I have personal knowledge of the facts contained herein and if called upon as a witness in this matter, I could and would competently testify thereto. I am over 21 years of age. I am authorized to make this declaration on behalf of FINOVA.

2. I have been a Credit Officer for the period relevant to the transactions and events which are the subject matter of this proceeding, and I am personally familiar with the record keeping procedures used by FINOVA and with the records and files maintained by FINOVA in the ordinary course of its operations.

3. I have reviewed those files and records maintained by FINOVA in connection with the transactions which are the subject matter of this action and each of the documents

attached hereto is a true and correct copy of a document which is maintained by FINOVA in the ordinary course of its operations.

4. Pursuant to that certain Equipment Lease No. 5645900 dated as of December 29, 1995, Master Lease Schedule No. 5645900 dated as of December 29, 1995, 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. C022200101 dated as of August 29, 1998 by and between the Debtor and FINOVA (collectively, the "Lease"), the Debtor leased from FINOVA certain equipment for use in the Debtor's business.

5. Pursuant to Equipment Lease No. 5645900, each lease schedule is an indivisible part of the Lease.

6. On December 29, 2000, pursuant to Agreement No. R5645900, the Debtor financed the purchase of the equipment originally subject to Master Lease Schedule No. 5645900.

7. The Master Equipment Lease Schedule No. C022200301 ("Schedule C022200301") requires the Debtor to make monthly payments to FINOVA in the amount of \$88,558.21, plus applicable taxes. According to the Debtor's records, the equipment leased pursuant to Schedule 22200301 is located at Store Nos. 811, 862, 881, 936 and 944. Schedule 22200301 does not allow the Debtor to disaggregate the lease payments based upon the location of the leased equipment. FINOVA's records indicate that the total arrearages as of July 30, 2001 for Schedule C022200301, including monthly payments, taxes and late charges, total \$599,772.16. A copy of FINOVA's invoice dated July 30, 2001 provides a breakdown of the total arrearages for Schedule C022200301 is attached hereto as Exhibit A.

8. The Master Equipment Lease Schedule No. C022200101 ("Schedule C022200101") requires the Debtor to make monthly payments to FINOVA in the amount of \$25,882.64, plus applicable taxes. According to the Debtor's records, the equipment leased pursuant to Schedule 22200101 is located at Store No. 879. FINOVA's records indicate that the total arrearages as of July 30, 2001 for Schedule No. C022200101, including monthly payments, taxes and late charges, total \$165,976.92. A copy of FINOVA's invoice dated July 30, 2001 provides a breakdown of the total arrearages for Schedule C022200101 is attached hereto as Exhibit B.

9. The Master Equipment Lease Schedule No. C060700101 ("Schedule C060700101") requires the Debtor to make monthly payments to FINOVA in the amount of \$37,408.77, plus applicable taxes. According to the Debtor's records, the equipment leased pursuant to Schedule 60700101 is located at Store No. 952. FINOVA's records indicate that the total arrearages as of July 30, 2001 for Schedule No. C060700101, including monthly payments, taxes and late charges, total \$179,090.58. A copy of FINOVA's invoice dated July 30, 2001 provides a breakdown of the total arrearages for Schedule C060700101 is attached hereto as Exhibit C.

10. The Agreement No. R5645900 ("Agreement R5645900") requires the Debtor to make monthly payments to FINOVA in the amount of \$109,123.42. According to the Debtor's records, the equipment leased pursuant to Agreement R5645900 is located at Store Nos. 932, 934, 936 and 950. Agreement R5645900 does not allow the Debtor to disaggregate the payments based upon the location of the leased equipment. FINOVA's records indicate that the total arrearages as of July 30, 2001 for Agreement R5645900, including monthly payments, taxes

AUG 11 2001 14:00 FR SACHNOFF & WEAVER#4312 207 6400 TO 2#800#1973635275 P.02

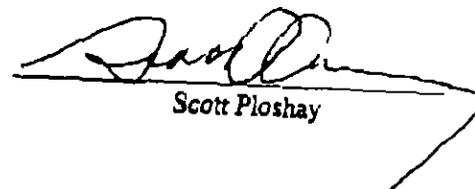
and late charges, total \$446,861.62. A copy of FINOVA's invoice dated July 30, 2001 provides a breakdown of the total arrearages for Agreement R5645900 is attached hereto as Exhibit D.

11. As a Credit Officer for FINOVA, had any additional payments been received by FINOVA on account of the Lease, I would have been informed thereof in the ordinary course of business by employees of FINOVA whose job duties include informing me of such facts. I have not been informed of the receipt of any such payments. Further, it was and remains the custom and practice of FINOVA to record in its books and records the receipt of any such payments at or closely following the time any such payment was received by an employee of FINOVA whose job duties include accurately recording the receipt of such payment. I know these procedures and records to be accurate and there is no record of the receipt of any additional payments. The absence of such entries indicates that no such payment was received and the amounts set forth above in Paragraph 5 through 8 are due and owing.

12. Additionally, under the terms of the Lease and Agreement R5645900, FINOVA is entitled to recovery of attorneys' fees and costs from the Debtor. As of August 3, 2001, FINOVA's attorneys' fees and costs incurred in enforcing its rights under the Lease and Agreement R5645900 total \$26,753.97.

I declare under penalty of perjury under the laws of the State of New Mexico that the foregoing is true and correct.

DATED: August 11, 2001


Scott Ploschay

FINOVA Capital Corporation
 115 West Century Road - Third Floor
 Paramus NJ 07652

Page number : 1

VARIOUS EQUIPMENT

CUSTOMER

FURR'S SUPERMARKETS
 4411 THE 25 WAY - STE. 100
 ATT: JEAN DROLLINGER
 ALBUQUERQUE NM 87109

CUSTOMER NO.

INVOICE DATE

C022200301

7/30/01

1

CONTRACT #	DESCRIPTION	INVOICE	DATE DUE	AMOUNT
C022200301	AUGUST PAYMENT	1572213	8/30/01	88,558.21
	SALES / USE TAX	1572213	8/30/01	4,883.64
	JULY PAYMENT	1568473	7/30/01	88,558.21
	2001 - ESTIMATED PPT	1568473	7/30/01	50,300.38
	2000 PROPERTY TAX	1568473	7/30/01	8,300.00
	SALES / USE TAX	1568473	7/30/01	4,883.64
	JUNE PAYMENT	1565358	6/30/01	88,558.21
	SALES / USE TAX	1565358	6/30/01	5,256.31
	LATE CHARGES	1565358	6/30/01	8,855.82
	MAY PAYMENT	1564572	5/30/01	88,558.21
	SALES / USE TAX	1564572	5/30/01	5,256.31
	LATE CHARGES	1564572	5/30/01	8,855.82
	APRIL PAYMENT	1558282	4/30/01	88,558.21
	SALES / USE TAX	1558282	4/30/01	5,256.31
	LATE CHARGES	1558282	4/30/01	8,855.82
	MARCH PAYMENT	1554499	3/30/01	16,443.01
	SALES / USE TAX	1554499	3/30/01	5,256.31
	LATE CHARGES	1554499	3/30/01	8,855.82
	LATE CHARGES	1550133	2/28/01	8,855.82

BALANCE DUE

CONTINUED

PLEASE RETURN THIS PORTION WITH YOUR CHECK IN ENVELOPE PROVIDED

CUSTOMER

FURR'S SUPERMARKETS
 4411 THE 25 WAY - STE. 100
 ATT: JEAN DROLLINGER
 ALBUQUERQUE NM 87109

BALANCE DUE

CUSTOMER NO.

INVOICE DATE

C022200301

7/30/01

PLEASE MAKE CHECK PAYABLE TO:

REMITTO

FINOVA Capital Corporation
 33523 Treasury Center
 Chicago, IL 60694-3500

REMITTANCE COPY

INDICATE
 AMOUNT
 ENCLOSED

Check here for Equipment or Billing address change. Please provide correct information in space provided on back of invoice

01C022200301LL01083000599772165

FINOVA Capital Corporation
115 West Century Road - Third Floor
Paramus NJ 07652

Page number : 2

VARIOUS EQUIPMENT

CUSTOMER

FURR'S SUPERMARKETS
4411 THE 25 WAY - STE. 100
ATT: JEAN DROLLINGER
ALBUQUERQUE NM 87109

CUSTOMER NO.

INVOICE DATE

C022200301

7/30/01

2

CONTRACT #	DESCRIPTION	INVOICE	DATE DUE	AMOUNT
C022200301	LATE CHARGES	1546640	1/30/01	6,866.10
TOTAL CHARGE FOR CONTRACT: C022200301				599,772.16

*** PAYMENT IS DUE ON OR BEFORE THE DATE SHOWN ***
PLEASE ENCLOSE THE REMITTANCE STUB(S) WITH ALL PAYMENTS.

FOR CUSTOMER INQUIRIES, CALL (800) 945-6445

BALANCE DUE

599,772.16

FINOVA Capital Corporation
115 West Century Road - Third Floor
Paramus NJ 07652

EQUIPMENT DESCRIPTION
SUPERMARKET EQUIPMENT
C022200101-66042
66042
3701 CONSTITUTION NE
ALBUQUERQUE NM 87110

FURR'S SUPERMARKETS
4411 THE 25 WAY - STE. 100
ATT: JEAN DROLLINGER
ALBUQUERQUE NM 87109

CUSTOMER NO. INVOICE DATE
C022200101 7/30/01

1

CONTRACT #	DESCRIPTION	INVOICE	DATE DUE	AMOUNT
C022200101	AUGUST PAYMENT	1572212	8/30/01	25,882.64
	SALES / USE TAX	1572212	8/30/01	1,294.13
	JULY PAYMENT	1568471	7/30/01	25,882.64
	2001 - ESTIMATED PPT	1568471	7/30/01	15,322.75
	SALES / USE TAX	1568471	7/30/01	1,294.13
	JUNE PAYMENT	1565357	6/30/01	25,882.64
	SALES / USE TAX	1565357	6/30/01	1,423.54
	LATE CHARGES	1565357	6/30/01	2,588.26
	MAY PAYMENT	1564571	5/30/01	25,882.64
	SALES / USE TAX	1564571	5/30/01	1,423.54
	LATE CHARGES	1564571	5/30/01	2,588.26
	APRIL PAYMENT	1558281	4/30/01	25,882.64
	SALES / USE TAX	1558281	4/30/01	1,423.54
	LATE CHARGES	1558281	4/30/01	2,588.26
	SALES / USE TAX	1554498	3/30/01	129.41
	LATE CHARGES	1554498	3/30/01	2,588.26
	SALES / USE TAX	1550747	2/28/01	129.41
	LATE CHARGES	1550747	2/28/01	2,588.26
	LATE CHARGES	1546639	1/30/01	1,181.97

B

BALANCE DUE CONTINUED

PLEASE RETURN THIS PORTION WITH YOUR CHECK IN ENVELOPE PROVIDED

FURR'S SUPERMARKETS
4411 THE 25 WAY - STE. 100
ATT: JEAN DROLLINGER
ALBUQUERQUE NM 87109

BALANCE DUE
CUSTOMER NO. INVOICE DATE
C022200101 7/30/01

PLEASE MAKE CHECK PAYABLE TO:

FINOVA Capital Corporation
33523 Treasury Center
Chicago, IL 60694-3500

REMITTANCE COPY

INDICATE AMOUNT ENCLOSED

Check here for Equipment or Billing address change. Please provide correct information in space provided on back of invoice.

01C022200101LL01083000165976921

FINOVA Capital Corporation
115 West Century Road - Third Floor
Paramus NJ 07652

EQUIPMENT DESCRIPTION
SUPERMARKET EQUIPMENT
C060700101-60477
60477
STORE #952, 951 NORTH RESLER D
EL PASO TX 79912

CUSTOMER
FURR'S SUPERMARKETS
4411 THE 25 WAY - STE. 100
ATT: JEAN DROLLINGER
ALBUQUERQUE NM 87109

CUSTOMER NO. C060700101
INVOICE DATE 7/15/01

1

CONTRACT #	DESCRIPTION	INVOICE	DATE DUE	AMOUNT
C060700101	AUGUST PAYMENT	1571465	8/15/01	37,408.77
	SALES / USE TAX	1571465	8/15/01	3,086.22
	JULY PAYMENT	1564579	7/15/01	37,408.77
	2001 - ESTIMATED PPT	1564579	7/15/01	35,035.24
	SALES / USE TAX	1564579	7/15/01	3,086.22
	LATE CHARGES	1564579	7/15/01	3,740.88
	LATE CHARGES	1564574	6/15/01	3,740.88
	LATE CHARGES	1564573	5/15/01	3,740.88
	LATE CHARGES	1557364	4/15/01	3,740.88
	2000 COUNTY PPT	1550122	3/15/01	36,879.20
	LATE CHARGES	1550122	3/15/01	3,740.88
	LATE CHARGES	1549714	2/15/01	3,740.88
	LATE CHARGES	1545738	1/15/01	3,740.88

TOTAL CHARGE FOR CONTRACT: C060700101 179,090.58

*** PAYMENT IS DUE ON OR BEFORE THE DATE SHOWN ***
PLEASE ENCLOSE THE REMITTANCE STUB(S) WITH ALL PAYMENTS.

FOR CUSTOMER INQUIRIES, CALL (800)945-6445
BETWEEN 8:00 AM AND 6:00 PM EST

BALANCE DUE 179,090.58

PLEASE RETURN THIS PORTION WITH YOUR CHECK IN ENVELOPE PROVIDED

CUSTOMER
FURR'S SUPERMARKETS
4411 THE 25 WAY - STE. 100
ATT: JEAN DROLLINGER
ALBUQUERQUE NM 87109

BALANCE DUE 179,090.58
CUSTOMER NO. C060700101
INVOICE DATE 7/15/01

PLEASE MAKE CHECK PAYABLE TO:

TO
FINOVA Capital Corporation
33523 Treasury Center
Chicago, IL 60694-3500

REMITTANCE COPY
INDICATE AMOUNT ENCLOSED

Check here for Equipment or Billing address change. Please provide correct information in space provided on back of invoice.

01C060700101LL01081500179090582

FINOVA Capital Corporation
115 West Century Road - Third Floor
Paramus, N.Y. 10765

EQUIPM. DESCRIPTION
RENEWAL OF 5645900

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Exhibit 1