

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.

Debtor.

Case No. 11-01-10779 SA
Chapter 11

**STIPULATED ORDER CONDITIONALLY APPROVING DEBTOR'S
SETTLEMENT OF CERTAIN EQUIPMENT LEASE CLAIMS**

This matter came before the Court on the following motions and notices filed by the Debtor Furr's Supermarkets, Inc.'s (the "Debtor"):

- i. Motion for Order Approving Sale of Some or All of Debtor's Operating Assets and Granting Related Relief, filed June 1, 2001;
- ii. Motion for Order Approving Procedure Relating to the §365(f)(2) Adequate Assurance Requirement for Assignment of Leases, filed July 16, 2001;
- iii. Amended Motion For Order Approving Procedure Relating To The §365(B)(1) Cure And Adequate Assurance Requirements For Assumption Of Leases, filed July 16, 2001; and
- iv. Notice of Proposed Cure Amounts, served August 6, 2001 (the "Cure Notice").

The Court, being duly advised in the premises and noting that the Debtor has reached an agreement with the equipment lessors set forth below, that the Debtor's secured lenders, and the Unsecured Creditors' Committee have all agreed to the entry of this Order, hereby FINDS as follows:

- A. Good cause exists for the entry of this Order.

B. The Debtor's proposed settlement of the equipment lease claims dealt with below is fair and reasonable under the circumstances, and is in the best interests of the Debtor, the estate, and the Debtor's creditors and other parties in interest.

C. Entry of this Order without further notice is appropriate under the particular circumstances of this matter.

D. Pursuant to Bankruptcy Rule 9019, the Court should approve the compromise and settlements reflected herein, subject to and conditioned upon the consummation of the transactions contemplated under the asset purchase agreement between the Debtor and Fleming Companies, Inc., as amended (the "Asset Purchase Agreement").

E. Under the terms of the Asset Purchase Agreement, the Debtor is selling and/or assigning the real property leases and equipment for the grocery stores identified in Exhibit A hereto (the "Assigned Stores"). All of the Debtor's other grocery stores are referred to herein as the "Rejected Stores").

IT IS THEREFORE ORDERED:

1. Subject to and conditioned upon the consummation of the transactions contemplated under the Asset Purchase Agreement, the following compromises and settlements with the following equipment lessors are hereby approved:

a. Finova Capital Corporation. The Debtor will pay Finova Capital Corporation ("Finova") \$2,100,000 for all of Finova's interest in equipment located in the Debtor's store Nos. 934, 936, 879 and 881. The automatic stay shall be modified to allow Finova to repossess and dispose of all equipment subject to Lease Schedules C22200101, C022200301 and C060700101 and Agreement R5645900

(collectively, the "Finova Leases") that is not located in the Debtor's store Nos. 934, 936, 879 and 881. The Debtor shall pay Finova \$2,100,000 from the proceeds of the Fleming sale by wire transfer on August 31, 2001 (unless such deadline is extended by agreement of the parties). Upon payment of the \$2,100,000, the Finova Leases shall be deemed rejected. Finova will retain no administrative claim of any kind, but reserves its right to file a pre-petition, unsecured, non-priority claim, and the Debtor reserves all of its rights with respect to any such claim filed;

~~b. Greenleaf Compaction. The Debtor will pay Greenleaf \$595,562 for all of the trash compaction and related equipment leased to the Debtor by Greenleaf located in the Assigned Stores. Greenleaf will be able to repossess the~~

~~the repossession and sale of such equipment. Greenleaf will retain no administrative claim of any kind, but reserves its right to file a pre-petition, unsecured, non-priority claim, and the Debtor reserves all of its rights with respect to any such claim filed,~~

c. Heller Financial Leasing. The Debtor will pay Heller Financial Leasing \$350,000 for all of the floor cleaning equipment leased to the Debtor by Heller Financial Leasing located in the Assigned Stores. Heller Financial Leasing will be able to repossess the floor cleaning equipment located in the Rejected Stores, and the automatic stay shall be lifted to allow the repossession and sale of such equipment. Heller Leasing will retain no administrative claim of any kind with respect to the floor cleaning equipment schedule, but reserves its right to file a pre-petition, unsecured, non-priority claim with respect thereto, and the Debtor reserves all of its rights with respect to any such claim filed. This settlement does not settle the remaining lease issues between

the Debtor and Heller Financial Leasing regarding the equipment at stores 953, 955, and the El Paso distribution center, and the parties reserve all of their rights with respect thereto;

d. MDFC (Boeing). The Debtor and MDFC Equipment Leasing Corporation, a subsidiary of Boeing Capital Corporation, n/k/a BCC Equipment Leasing Corporation ("Boeing") have entered into a Compromise and Settlement Agreement, a copy of which is attached hereto, and which provides in part: 1) the Debtor shall pay a total of \$1,380,000 for all of the equipment leased by to the Debtor for the Debtor's stores ## 875, 896, and 945, under Boeing Lease IER Schedules 1-8; 2) the leases for all other leased equipment (Boeing Lease IER Schedules 9-14) shall be rejected, and the automatic stay shall be modified to allow Boeing to immediately repossess its equipment located in the remaining stores; 3) Boeing will retain no administrative claim of any kind, but reserves its right to file a pre-petition, unsecured, non-priority claim, and the Debtor reserves all of its rights with respect to any such claim filed; 4) Boeing's ownership of, and rights to the equipment under the rejected leases, is superior to that of all other creditors; 5) the pending Adversary Proceeding against Boeing and Boeing's Counterclaim therein shall be dismissed with prejudice; 6) payment to Boeing shall be made by wire transfer on or before August 31, 2001, unless such deadline is extended by mutual agreement of the parties; and 7) the Debtor and Boeing mutually release each other from any and all claims of any kind that they may have against the other. The Court approves the Compromise and Settlement Agreement, and authorizes all parties to take such actions as to accomplish the settlement.

e. Compaq Financial. On August 31, 2001 or within three business days thereafter, the Debtor shall pay Compaq Financial \$415,416 for all of the equipment leased to the Debtor by Compaq Financial located in the Assigned Stores. Compaq Financial or its designee is hereby authorized to repossess the equipment located in the Rejected Stores, and the automatic stay is hereby lifted to allow the repossession and sale of such equipment. Compaq Financial will retain no administrative claim of any kind in this case, but reserves its right to file a pre-petition, unsecured, non-priority claim, and the Debtor reserves all of its rights with respect to any such claim filed. The Debtor and Compaq Financial mutually release the other and their respective officers, directors, and agents from any and all claims of any kind that they may have against the other.

f. Petroleum Capital. The Debtor will pay Petroleum Capital/Verifone Finance (collectively "Petroleum Capital") \$400,000, in cash, for all of Petroleum Capital's right, title, and interest in all of the equipment described in lease #3098301, as-is, where is, without any representations or warranties whatsoever. The Debtor shall deliver the \$400,000 purchase price to Petroleum Capital as follows, so it is received by Petroleum Capital by not later than August 31, 2001 (unless such deadline is extended by agreement of the parties):

Account Name:	VeriFone Finance, Inc.
Account Number:	1 536 0125 3773
ABA Routing Number:	123000220
Bank Name:	US Bank

Petroleum Capital will retain no administrative claim, but reserves its right to file a pre-petition, unsecured, non-priority claim by the later of the claims bar date or 60 days after the entry of this Order. The Debtor reserves all of its rights with respect to any such

claim filed, but shall have no right to object to or seek return of the \$400,000 payment required to be made herein.

g. Fleet Capital. The Debtor will pay Fleet Capital \$90,000 for all of the equipment leased to the Debtor by Fleet Capital. Fleet Capital will retain no administrative claim of any kind, but reserves its right to file a pre-petition, unsecured, non-priority claim, and the Debtor reserves all of its rights with respect to any such claim filed;

h. Texas Medical Screening. The Debtor will pay Texas Medical Screening \$30,400 for all of the equipment leased to the Debtor by Texas Medical Screening located in the Assigned Stores. The leases for all other leased equipment shall be rejected, and the automatic stay shall be modified to allow Texas Medical Screening to repossess its equipment located in the Rejected Stores. Texas Medical Screening will retain no administrative claim of any kind, but reserves its right to file a pre-petition, unsecured, non-priority claim, and the Debtor reserves all of its rights with respect to any such claim filed;

i. Comdisco. At the closing of the Asset Purchase Agreement, the Debtor shall pay, or cause to be paid, to Comdisco the sum of \$983,276.48 for all of the equipment listed on a Bill of Sale to be provided by Comdisco, which bill of sale will generally describe the equipment listed on Comdisco Equipment Schedule 3 dated December 15, 1994 and Comdisco Equipment Schedule 4 dated November 5, 1999 and leased by Comdisco to the Debtor pursuant to a Master Lease Agreement dated July 23, 1994. Comdisco will retain no administrative claim of any kind through August 31, 2001, but reserves its right to file (a) a pre-petition, unsecured,

non-priority claim or (b) a request for payment of administrative expenses incurred on or after September 1, 2001 (but only if not paid pursuant to this paragraph on August 31, 2001), and the Debtor reserves all of its rights with respect to any such claim or request filed; and

j. Advanta Leasing/Sonitrol. The Debtor will pay Advanta \$137,304.87 for all of the equipment leased to the Debtor by Advanta Leasing/Sonitrol located in the Assigned Stores that will be assigned to third party assignees on the closing of the Asset Purchase Agreement. Advanta Leasing/Sonitrol will be able to repossess the equipment located in the Rejected Stores, and the automatic stay shall be lifted to allow the repossession and sale of such equipment. Advanta Leasing/Sonitrol will retain no administrative claim of any kind, but reserves its right to file a pre-petition, unsecured, non-priority claim, and the Debtor reserves all of its rights with respect to any such claim filed.

2. No Representations and Warranties. The equipment to be transferred and sold to the Debtor pursuant to the settlements and compromises set forth and approved by this Order will be transferred "as is, where is" and without any warranties and representations.

3. Bills of Sale. The equipment lessors will deliver bills of sale to the Debtor on or before 12:00 p.m. August 31, 2001. ^{or such later time as the parties may agree} The Debtor will hold the bills of sale in escrow until the funds indicated above have been paid to the equipment lessors, at which point the bills of sale shall be deemed delivered to the Debtor.

4. Immediately Effective. As permitted by Rule 6004(g) of the Federal Rules of Bankruptcy Procedure, this Order shall be effective immediately upon entry.


HONORABLE JAMES S. STARZYNSKI

Submitted and Approved:

JACOBVITZ, THUMA & WALKER, P.C.

By: _____

David T. Thuma
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(505) 766-9272
(505) 766-9272 (fax)

Attorneys for the Debtor

Approved as to form:

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:

AUG 31 2001

Mary B. Anderson

MODRALL, SPERLING, ROEHL, HARRIS & SISK

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(505) 243-6129
(505) 247-3185 (fax)
Attorneys for the Unsecured Creditors' Committee

LEASE ASSIGNMENTS

STORE NO.	LANDLORD	PURCHASER
917	Claus Dolling	MAL Enterprises, Inc.
878	Weingarten Realty	Safeway, Inc.
882	CA New Mexico LLC	Safeway, Inc.
904	MALEASE 15 Safe Corp.	Safeway, Inc. (sublease to MAL Enterprises, Inc.)
916	Lakeway Shopping Center	Safeway, Inc. (Sublease to Erica, Inc.)
945	Surway Assoc. Ltd.	Safeway, Inc.
912	Kawanakoa, Abigail K. Alta Mae Haugland (ground lease)	W&N Enterprises, Inc.
914	Bandem Partnership	W&N Enterprises, Inc.
933	LSF Bassett, L.P.	Big 8 Foods, Ltd.
934	Furrs 6 LLC	Big 8 Foods, Ltd.
935	G.G.I.A. II, Limited	Big 8 Foods, Ltd.
936	Lincoln Trust as Custodian for Daniel Elstein, M.D. Rollover IRA	Big 8 Foods, Ltd.
937	Furrs 8 LLC	Big 8 Foods, Ltd.
947	Weingarten Realty Investors	Big 8 Foods, Ltd.

EXHIBIT

A

STORE NO.	LANDLORD	PURCHASER
918	Claus Dolling	Erica, Inc.
928	Dyer Street Triangle JT Venture	Erica, Inc.
948	Western Properties Assocs Two Green/Watkins (ground lease)	Erica, Inc.
977	Rosche One Interests, L.P.	Erica, Inc.
987	Tri State Commercial	Erica, Inc.
875	Furrs 2 LLC Mountain Run Partners Ltd.	Smith's Food & Drug Centers, Inc.
876	Mossman-Gladden (ground lease) Furrs 1 LLC	Smith's Food & Drug Centers, Inc.
879	Keleher Realty, Inc.	Smith's Food & Drug Centers, Inc.
884	Werner Kinderman	Smith's Food & Drug Centers, Inc.
891	Seville East	Smith's Food & Drug Centers, Inc.
897/887	Developers Diversified Realty Corp.	Smith's Food & Drug Centers, Inc.
899	Centeramerica Property Trust, L.P.	Smith's Food & Drug Centers, Inc.
885	(Owned by Furr's--fee interest to be transferred)	Pay and Save, Inc.
888	P.O.B. Apollo Santa Fe L.P.	Pay and Save, Inc.
889	Nydes Properties	Pay and Save, Inc.

STORE NO.	LANDLORD	PURCHASER
901	Rosche One Interests, L.P.	Pay and Save, Inc.
993	Sunwest N.O.P., Inc.	Pay and Save, Inc.
874	River Oaks Properties, Ltd.	Raley's of New Mexico, Inc.
881	Werner Kinderman	Raley's of New Mexico, Inc.
896	Cruz Alta Plaza	Raley's of New Mexico, Inc.
886	Weingarten Realty	Whole Foods Market Southwest, L.P.
913	Greer Enterprises	Fleming Companies, Inc.

COMPROMISE AND SETTLEMENT AGREEMENT

This Compromise and Settlement Agreement (the "Agreement") dated as of August 29, 2001, is among Furr's Supermarkets, Inc., a Delaware Corporation ("Furr's" or the "Debtor") and MDFC Equipment Leasing Corporation, a subsidiary of Boeing Capital Corporation, n/k/a BCC Equipment Leasing Corporation ("Boeing"). Furr's and Boeing are hereinafter sometimes referred to collectively, as the ("Parties") and singularly, as a ("Party").

WITNESSETH

WHEREAS, Furr's is a debtor in possession under Chapter 11 of Title 11, United States Code (as amended, the "Bankruptcy Code"), styled In re: Furr's Supermarkets, Inc., Case No. 01-10779-SA-11, (the "Bankruptcy Case"), filed on February 8, 2001 (the "Petition Date") in the United States Bankruptcy Court, District of New Mexico (the "Bankruptcy Court");

WHEREAS, on or about September 26, 1994, Boeing executed an Equipment Lease Agreement with Debtor, which was Equipment Lease No. 3252-4 (the "Lease"). The Lease was a master lease of multiple schedules of equipment to be leased for Debtor's use in various of its Furr's grocery store locations, with each such equipment schedule being referred to as an "Individual Equipment Record" ("IER"). In all, under the Lease Debtor eventually executed fourteen separate IERs for furniture, fixtures and equipment for Debtor's stores numbered 812, 875, 894, 896, 945, 946 and 951, all as summarized in the chart attached hereto as Exhibit "A";

WHEREAS, as of the Petition Date, Furr's was past due on its obligations to Boeing under the Master Lease Agreement in regard to IER #'s 1-8 in the sum of \$234,945.30 (the "Cure Amount");

WHEREAS, Furr's and Fleming entered into that certain sale agreement by which certain of the Furr's stores containing Boeing lease equipment will be sold to Fleming, and in connection therewith the IER #'s 1-8 will be assumed by Furr's and assigned to Fleming, and Furr's has asked to purchase the subject equipment from Boeing for the sum of \$776,335.00, as shown in the attached Exhibit "B" (the "IER 1-8 Buyout Price");

WHEREAS, Boeing objected to 1) the sale to Fleming, 2) treating the IER's as separate leases, 3) the characterization of the Boeing Lease as a disguised financing transaction, 4) various other rejection motion matters, and 5) Furr's raised various Boeing Lease issues (collectively, the "Boeing Lease related objections");

WHEREAS, on or about July 31, 2001, Furr's commenced an adversary proceeding against Boeing, styled, "Furr's Supermarkets, Inc. v. MDFC Equipment Leasing Corporation and Heller Financial, Inc.," adversary proceeding number 01-01160S, seeking to characterize Boeing's Lease as a disguised financing transaction, (the "Adversary Proceeding"), and upon answering the Adversary Proceeding Boeing filed a counterclaim against Furr's (the "Counterclaim");

WHEREAS, Boeing has received post-petition lease payments totaling \$1,030,048.60, which are less than the total lease payments owed from the Petition Date to either the lease rejection date of IER #'s 9-14, and/or the 8/31/01 closing date of the Fleming transaction as to IER #'s 1-8, and Boeing asserts administrative expense claims for the difference ("Boeing's Administrative Expense Claims"), and Furr's has offered to pay a compromise amount of additional post-petition rent of \$290,687.00 in regard to the use of Boeing IER #'s 9-14 lease equipment through the closing of the Furr's stores 946, 894, 812, 871, and 951, (the "Closed Store Additional Rent") and Furr's has also agreed to pay a compromise amount of post-petition administrative rent through closing of the

Fleming transaction in regard to IER #'s 1-8 of approximately \$85,000.00 (the "Assumed Store Additional Rent") and

WHEREAS, in order to settle 1) Boeing's Administrative Expense Claims, 2) the Boeing Lease related objections, 3) the Adversary Proceeding, and 4) the Counterclaim, and to avoid further litigation, the Parties have agreed to enter into a Compromise and Settlement as set forth below.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties hereby each agree as follows:

1. **APPROVAL**

A. The effectiveness of this Agreement is expressly conditioned upon (a) the execution and delivery of this Agreement by all Parties, (b) the receipt by Boeing by close of business on August 31, 2001, of the sum of **\$1,380,000.00** USD (the "Settlement Payment")¹ via wire transfer to the Wire Transfer Account, and © the entry of a Final Order (as defined below) approving this Agreement by the Bankruptcy Court in the Adversary Proceeding and in the Bankruptcy Case in form reasonably satisfactory to the Parties (the "Approval Order" and the date the Approval Order becomes final shall be the "Effective Date"). The Parties shall cooperate to request and obtain such approval from the Bankruptcy Court.

¹The Settlement Payment of \$1,380,000.00 approximates the sum of the Cure Amount (\$234,945.30), the IER #'s 1-8 Buyout Price (\$776,335.00), the Closed Store Additional Rent (\$290,687.00), and the Assumed Store Additional Rent (\$85,000.00).

B. The Approval Order shall contain recital of the following terms of settlement:

- i. Boeing shall receive the Settlement Payment in full satisfaction of the Boeing Administrative Claims, the IER # 1-8 Buyout Price, and the Cure Amount;
- ii. Boeing shall have the right to file unsecured Claims, and Furr's shall retain the right to object to same;
- iii. Any rejection order concerning the closed stores (in which there is Boeing equipment) shall be in form reasonably satisfactory to Boeing, and will generally include terms lifting the stay and permitting Boeing to take possession of the Boeing Lease equipment;
- iv. The Adversary Proceeding and the Counterclaim, as well as any claims that have been brought or could have been brought therein shall be dismissed with prejudice;
- v. The assumption and assignment of the IER #'s 1-8 equipment shall be approved, and Boeing shall provide a bill of sale of such equipment in form substantially similar to that attached hereto as Exhibit "C" on an "as is, where is, no warranty or representations" basis, and Boeing's ownership and superior right to all of the Boeing equipment under IER #'s 9-14 shall be recognized and affirmed;
- vi. The Approval Order shall be binding upon all entities and persons, including, without limitation, Furr's and its successors

and affiliates, the purchaser of the IER #'s 1-8 equipment, any trustee or successor trustee to Furr's, any reorganized Furr's, or other successor to Furr's, and any assignee of Furr's, and under any confirmed plan in this Bankruptcy Case; and

- vii. Except for obligations under the Agreement (including any Unsecured Claims that may be filed by Boeing), Boeing and Furr's shall release each other from any and all Claims (as defined herein).

For purposes of this Agreement, a "Final Order" means (x) an order of the Bankruptcy Court as to which the time for appeal, petition for certiorari or move for reargument or rehearing has expired, and as to which no appeal, petition for certiorari or other proceedings for reargument or rehearing shall then be pending or, (y) in the event that an appeal, writ for certiorari, reargument or rehearing thereof has been sought, such order of the Bankruptcy Court shall have been affirmed by the highest court to which such order may be appealed, or certiorari has been denied, and time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired; provided, however, that no order shall fail to become a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure may be filed with respect to the order.

For purposes of this Agreement, "Wire Transfer Account" shall mean:

Chase Manhattan Bank
270 Park Avenue
New York, NY 10004
ABA #: 021000021
Account Name: Boeing Capital Corporation
Account Number: 910-1-307412
Tax ID: 95-2564584

2. **RELEASES.**

A. **Release of the Debtor Furr's and the Estate.** Except for the obligations of Furr's set forth in this Agreement, Boeing, and its successors and assigns (effective as of the Effective Date) hereby releases, acquits and forever discharges Furr's and its successors and assigns of and from any and all Claims which Boeing may have, or to which Boeing may be entitled, against such released persons.

B. **RELEASE OF BOEING.** Except for the obligations of Boeing set forth in this Agreement, Furr's and the Bankruptcy Estate, and their respective successors and assigns (effective as of the Effective Date) hereby release, acquit and forever discharge Boeing and its successors and assigns, of and from any and all Claims which the Debtor Furr's, the Bankruptcy Estate, or any successor Trustee may have, or to which they or any of them may be entitled, against such released persons; and each of the Debtor Furr's, the Bankruptcy Estate and any successor Trustee agrees and covenants never to sue any such released persons for or based upon any such Claims.

3. **DEFINITION OF "CLAIMS".** As used in this Agreement, the terms "Claims" shall mean: any and all rights, claims, counterclaims, actions, causes of action, demands, obligations, costs, expenses, losses, damages, or liabilities which a Party may have, or to which the Party may be entitled arising under or in any manner related to the Adversary Proceeding, and the transactions, acts, occurrences, or omissions described in this Agreement (a) whether known or unknown, (b) whether now or hereafter existing, (c) whether asserted or assertable in the Bankruptcy Case, the Adversary Proceeding, any other lawsuit or legal proceeding, or otherwise, (d) whether based on any of the Boeing Master Lease Agreement and equipment, or (e) whether arising out of or based upon Title

11 of the United States Code (including, without limitation, 11 U.S.C. §§ 365, 502(g), 506(c), 510, 542, 543, 544, 547, 548, 549 and 550), any other federal statute, state statute, rule, regulation, common law, tort, contract, negligence, gross negligence, intentional conduct, strict liability, real property rights, personal property rights, or any other theory or basis at law or in equity; provided however, "Claims" does not include any allowed general unsecured claim of Boeing which shall survive and shall remain an obligation of Furr's and of the Bankruptcy Estate.

4. **NO ASSIGNMENT OF CLAIMS: AUTHORITY.** Each Party acknowledges, represents and warrants that it is the owner of the Claims released herein and that no such Claims have been transferred, assigned or in any way encumbered. Each of the Parties represents and warrants that (a) it has the full power and authority to execute this Agreement and any other document or Agreement executed in connection herewith and (b) this Agreement constitutes legal, valid and binding obligation of such Party and is enforceable against such Party in accordance with its terms.

5. **CHOICE OF LAW. THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF TEXAS AND APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. ANY LITIGATION BETWEEN OR AMONG THE PARTIES REGARDING THE EFFECT OF ENFORCEMENT OF THIS AGREEMENT OR ANY DISPUTES BETWEEN OR AMONG THE PARTIES PRIOR TO THE CLOSING OF THE BANKRUPTCY CASE SHALL BE BROUGHT IN THE BANKRUPTCY COURT.**

6. **CONSTRUCTION.** Each of the Parties represents and warrants that it has had the benefit of attorneys of its own choice, that it has had this Agreement reviewed by

the attorneys of its choice, and that it has been afforded adequate opportunity to review this Agreement with its chosen attorney.

7. **SEVERABILITY**. Any section, clause, subsection, sentence, paragraph or provision of this Agreement held by a Court of competent jurisdiction to be invalid, illegal or unenforceable, shall not impair, invalidate or nullify the remainder of this Agreement but the effect thereof shall be confined to section, clause, subsection, sentence, paragraph or provision so held to be invalid, illegal or unenforceable.

8. **BINDING EFFECT**. This Agreement contains the entire agreement of the Parties with respect to the matters covered by this Agreement. The Parties acknowledge that this Agreement is executed after negotiations among the Parties and the Parties agree that there is no oral or other written agreements concerning the subject matter of this Agreement. This Agreement may only be amended in writing signed by all the Parties. This Agreement shall be binding upon the assignees and successors of the Parties hereto including, without limitation, any bankruptcy trustee of the Debtor, Furr's, and its successors and assigns. This Agreement and the releases hereby granted are personal to the Parties hereto and are not intended to create any right in any person who is not a Party to this Agreement.

9. **COUNTERPARTS**. This Agreement may be executed in multiple counterparts, all of which shall be deemed an original and all of which shall constitute one and the same instrument. Fax signatures shall be fully enforceable.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

FURR'S SUPERMARKETS, INC.

By: _____

**MDFC EQUIPMENT LEASING CORPORATION,
A Subsidiary Of BOEING CAPITAL
CORPORATION, n/k/a BCC EQUIPMENT
LEASING CORPORATION**

By: _____

<u>IER#</u>	<u>LOCATION</u>	<u>TERM</u>	<u>MONTHLY PAYMENT</u>	<u>NEW OR USED</u>	<u>START DATE/ END DATE</u>
3252-4-001	FURR'S #945, 8050 N. MESA DR, EL PASO, TX 79932	60 MNTH	\$19,268.65	NEW	10/15/94 10/15/99
3252-4-002	FURR'S #875, 5850 EUBANK, NE ALBUQ., NM 87111	60 MNTH	\$9,493.92	NEW	1/15/95 1/15/00
3252-4-003	FURR'S #896, 1100 PASEO DEL PUEBLO, TAOS, NM 87571	60 MNTH	\$11,223.08	NEW	1/15/95 1/15/00
3252-4-004	FURR'S #875, 5850 EUBANK, NE ALBUQ., NM 87111	47 MNTH	\$13,838.05	NEW	4/15/95 3/15/99
3252-4-005	FURR'S #896, 1100 PASEO DEL PUEBLO, TAOS, NM 87571	47 MNTH	\$13,178.80	NEW	4/15/95 3/15/99
3252-4-006	FURR'S #896, 1100 PASEO DEL PUEBLO, TAOS, NM 87571	54 MNTH	\$3,688.75	NEW	7/15/95 1/15/00
3252-4-007	FURR'S #875, 5850 EUBANK, NE ALBUQ., NM 87111	54 MNTH	\$5,480.85	NEW	7/15/95 1/15/00
3252-4-008	FURR'S #945, 8050 N. MESA DR, EL PASO, TX 79932	51 MNTH	\$4,899.61	NEW	7/15/95 10/15/99
3252-4-009	FURR'S #946, 8010 N. MESA DR, EL PASO, TX 79932	60 MNTH	\$29,010.17	NEW	8/1/95 8/1/00
3252-4-010	FURR'S #894, 208 MILLS AVE., LAS VEGAS, NM 87701	60 MNTH	\$18,635.58	NEW	11/15/95 11/15/00
3252-4-011	FURR'S #894, 208 MILLS AVE., LAS VEGAS, NM 87701	60 MNTH	\$432.00	NEW	11/15/95 11/15/00
3252-4-012	FURR'S #871, 8100 VENTURA NE, ALBUQ, NM 87109	60 MNTH	\$47,909.39	NEW	12/20/00 12/20/05
3252-4-013	FURR'S #812, 7800 ENCHANTED HILLS BLVD NE, RIO RANCHO, NM 87124	60 MNTH	\$48,877.32	NEW	12/20/00 12/20/05
3252-4-014	FURR'S #951, 10765 KENWORTHY DR, EL PASO, TX 79924	60 MNTH	\$51,716.34	NEW	12/20/00 12/20/05

EXHIBIT "A"

<u>IER#</u>	<u>LOCATION</u>	<u>ORIGINAL BASE TERM</u>	<u>MONTHLY RENTAL PAYMENT</u>	<u>START DATE/END DATE</u>	<u>ORIGINAL COST</u>	<u>ESTIMATED FAIR MARKET VALUE</u>
3252-4-001	FURR'S #945, 8050 N. MESA DR, EL PASO, TX 79932	60 MNTH	\$19,268.65	10/15/94 10/15/99	\$979,595.99	\$171,429.00
3252-4-002	FURR'S #875, 5850 EUBANK, NE ALBUQ., NM 87111	60 MNTH	\$9,493.92	1/15/95 1/15/00	\$475,171.33	\$95,036.00
3252-4-003	FURR'S #896, 1100 PASEO DEL PUEBLO, TAOS, NM 87571	60 MNTH	\$11,223.08	1/15/95 1/15/00	\$561,715.62	\$112,343.00
3252-4-004	FURR'S #875, 5850 EUBANK, NE ALBUQ., NM 87111	47 MNTH	\$13,838.05	4/15/95 3/15/99	\$675,356.20	\$135,017.00
3252-4-005	FURR'S #896, 1100 PASEO DEL PUEBLO, TAOS, NM 87571	47 MNTH	\$13,178.80	4/15/95 3/15/99	\$642,182.00	\$124,436.00
006	PASEO DEL PUEBLO, TAOS, NM 87571	60 MNTH	\$3,686.75	7/15/95 1/15/00	\$177,663.60	\$35,533.00
3252-4-007	FURR'S #875, 5850 EUBANK, NE ALBUQ., NM 87111	54 MNTH	\$5,460.85	7/15/95 1/15/00	\$264,447.90	\$52,890.00
3252-4-008	FURR'S #945, 8050 N. MESA DR, EL PASO, TX 79932	51 MNTH	\$4,899.61	7/15/95 10/15/99	\$227,254.50	\$45,451.00
					TOTAL BUYOUT PRICE IER#S 1-8	\$776,335.00

EXHIBIT "B"

BILL OF SALE

MDFC Equipment Leasing Corporation, a subsidiary of Boeing Capital Corporation, n/k/a BCC Equipment Leasing Corporation (hereinafter called "Boeing"), in consideration of the agreement with Furr's Supermarkets, Inc. (hereinafter called "Furr's"), and the sum of one dollar (\$1.00), does hereby quit claim unto Furr's, its successors and assigns, all of its right, title and interest in and to the equipment listed on the Individual Equipment Records 001 through 008 for Equipment Lease Agreement No. 3252-4 by and between MDFC Equipment Leasing Corporation and Furr's Supermarkets, Inc. dated as of September 26, 1994 ("Equipment").

The Equipment is being quit claimed hereunder "as-is where-is" and with all faults, without any representations, obligations or warranties whatsoever, express or implied, arising by law or otherwise, including, without limitation, any warranty, obligation or liability of Boeing with respect to fitness for a particular purpose, existence of all or part of the Equipment, merchantability, consequential damages or fitness for use of the Equipment and whether or not occasioned by Boeing's fault or negligence.

IN WITNESS WHEREOF, Boeing has caused this Bill of Sale to be executed by an officer thereof fully authorized as of this _____ day of _____, 2001.

**MDFC EQUIPMENT LEASING
CORPORATION, A Subsidiary Of BOEING
CAPITAL CORPORATION, n/k/a BCC
EQUIPMENT LEASING CORPORATION**

By: _____

Its: _____

EXHIBIT "C"