UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

In re:

FURR'S SUPERMARKETS, INC.,

Case No. 11-01-10779-SA
Chapter 11

Debtor.

STIPULATED ORDER APPROVING ESCROW OF FUNDS AND RELEASE OF INVENTORY

This matter came before the Court on the stipulation of Furr's Supermarkets, Inc., the debtor in possession ("Furr's"), Pinnacle Logistics, Inc. ("Pinnacle"), Countrywide Logistics, Inc. ("Countrywide"), and Heller Financial, Inc., as agent, and the Court, being [illegible] FINDS:

A. On February 8, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§101-1330 (as amended, the "Bankruptcy Code") in this Court. The Debtor continues to operate its business and manage its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. Pinnacle asserts it operates warehouse and distribution centers and provides related operational services to its clients. On or about September 23, 1998, Pinnacle and Furr's entered into a Warehousing and Distribution Agreement (the "Warehousing Agreement"), with respect to the facility located at 9820 Railroad Drive and 9601 Railroad Drive, El Paso, Texas (the "Distribution Center").

C. Countrywide asserts it is a common carrier and trucking firm providing transportation of goods and related services to its clients. On or about March 26, 1999, Countrywide and Furr's entered into a Transportation Services Agreement (the "Transportation Agreement") whereby Furr's agreed to retain Countrywide to provide Furr's with certain transportation and related services.

D. On or about June 29, 2001, this Court entered an order (the "Sale Order") authorizing the sale of certain of the Debtor's assets to Fleming Companies, Inc. ("Fleming"). Since the entry of the Sale Order, the Debtor has directed the transfer of most of its inventory previously stored in the Distribution Center via Countrywide and other contract carriers to a warehouse owned and operated by Fleming. At present, approximately 24 truckloads of inventory remain stored at the Distribution Center (all of the Debtor's inventory located at the Distribution Center or otherwise within the possession or control of Pinnacle or Countrywide is referred to herein as the "Remaining Inventory").

E. On or about June 29, 2001, Furr's filed a motion to reject the Warehousing Agreement and the Transportation Agreement (the "Rejection Motion"). Pinnacle and Countrywide objected to the Rejection Motion to the extent the Rejection Motion sought to adjudicate Pinnacle's rights under a separate sublease agreement. This Court entered an order on August 27, 2001 approving the Rejection Motion, effective retroactively to July 21, 2001. Pinnacle's rights to assert its rights under the sublease agreement were preserved and the Debtor has filed a motion to separately reject the sublease.

F. The parties hereto disagree what amounts, if any, are due to Pinnacle and Countrywide, respectively, under the Warehousing Agreement and the Transportation Agreement for post-petition services to the Debtor. The Debtor has withheld payment of certain amounts claimed due by Pinnacle and Countrywide pending resolution of this dispute.

G. In response to the Debtor's withholding payment for these post-petition services, Pinnacle and/or Countrywide have not released the Remaining Inventory.

H. On or about July 31, 2001, the Debtor filed a motion directing Pinnacle and Countrywide to release the Remaining Inventory and for sanctions (the "Sanctions Motion"). A hearing on the Sanctions Motion is presently scheduled for September 26, 2001.

I. The parties have agreed to the entry of this Stipulated Order to allow the Remaining Inventory to be shipped immediately to avoid any and all risk of damage, spoilage, or obsolescence of the Remaining Inventory pending resolution of the parties' dispute.

It is therefore ORDERED:

1. The Debtor shall arrange for and schedule with a contract carrier of its choosing and at its sole cost and expense, and Pinnacle and Countrywide will cooperate with the expeditious removal of the Remaining Inventory from the Distribution Center for transportation and delivery to the Fleming warehouse in Lubbock, Texas (the "Fleming Warehouse").

2. The parties hereto anticipate that the Remaining Inventory will be delivered from the Distribution Center to the Fleming Warehouse in three (3) separate deliveries, with deliveries to be scheduled for Tuesday, August 28, 2001, Wednesday August 29, 2001 and Thursday, August 30, 2001. Upon each delivery of the Remaining Inventory at the Fleming Warehouse, the transportation containers in which the Remaining Inventory was transported shall remain sealed and only to be opened in the presence of representatives of Furr's, Fleming, Pinnacle and Countrywide. On the date of the deliveries, and upon two (2) hours notice to Pinnacle and Countrywide, representatives of Furr's, Fleming, Pinnacle and Countrywide shall conduct a joint inspection of that day's delivery of the Remaining Inventory (the "Inspections").

3. During the course of the Inspections, representatives of Fleming and Furr's, in the presence of representatives of Pinnacle and Countrywide, will identify any and all of the Remaining Inventory that the representatives claim is sun damaged, spoiled, out of date, damaged in transport or similar claim based on quality of the Remaining Inventory (the "Claimed Damaged Remaining Inventory"). All Claimed Damaged Remaining Inventory shall be identified and listed on a mutually agreeable schedule.

4. Furr's shall release Pinnacle and Countrywide from any and all liability whatsoever from claims of spoiled or out of date merchandise for any of the Remaining Inventory that was spoiled or out of date prior to July 21, 2001.

5. At the conclusion of the Inspections, Pinnacle and Countrywide shall be released from any and all liability whatsoever related thereto for any of the Remaining Inventory that was delivered to the Fleming Warehouse, inspected and not listed on the Claimed Damaged Remaining Inventory schedule.

6. At the conclusion of the Inspections, all Claimed Damaged Remaining Inventory shall be segregated and stored in a secure area pending independent evaluation by representatives of the parties choosing to determine the commercial reasonableness of any claim of damage. Within five (5) business days of completion of the Inspections, unless extended by the mutual consent of the parties hereto, Furr's, Pinnacle and Countrywide will designate an independent inspector and will make available for and complete the joint independent inspection of the Claimed Damaged Remaining Inventory.

7. The failure to maintain the Claimed Damaged Remaining Inventory in a secure area so as to remain untampered shall and will result in an immediate waiver of any and all claims against Pinnacle and Countrywide for claims of sun damage, spoilage, out of date merchandise or similar claim based on quality of the Claimed Damaged Remaining Inventory.

8. For all of the Claimed Damaged Remaining Inventory that Fleming or any other third party agrees to purchase at a reduced price (such reductions, if any, to be based solely upon a claim of sun damage, spoilage, out of date merchandise or similar reduction based on quality), Furr's shall reserve all claims of any kind or nature whatsoever against Pinnacle and Countrywide for such items.

9. Furr's shall reserve all claims of any kind or nature whatsoever against Pinnacle and Countrywide with respect to any of the Claimed Damaged Remaining Inventory that Fleming refuses to purchase and Furr's is unable to otherwise sell to any

other third party, except for those claims specifically released pursuant to the terms of this Stipulated Order.

10. Pinnacle and Countrywide reserve all rights to contest the commercial reasonableness of any and all reductions in the purchase price or refusal to purchase any of the Claimed Damaged Remaining Inventory based upon a claim of sun damage, spoilage, out of date merchandise or similar reduction based solely on the quality of the Remaining Inventory, as well as any liability therefor.

11. Within fourteen (14) days after the Inspection, the Debtor shall place into a segregated, interest-bearing account $500,000 from the proceeds of any and all sales of the Remaining Inventory and Claimed Damages Remaining Inventory (the "Escrow Account"). The Escrow Account's signature authority will be held by Furr's undersigned counsel. No payments or withdrawals will be made from the Escrow Account absent an order from this Court.

12. If the Debtor fails to fully fund the Escrow Account within 14 days of completion of the Inspections, such failure to fund shall be a violation of this Order, and Pinnacle and Countrywide shall be entitled to an administrative claim in the amount due for the post-petition services provided to the Debtor, either as agreed upon by the parties or adjudicated by the Court, in addition to any other claim or rights they may have.

13. The parties will cooperate in obtaining a prompt resolution of the remaining amounts, if any, owed by the Debtor to Pinnacle and Countrywide for post-petition services rendered under the Warehousing Agreement and the Transportation Agreement.

14. All rights and priorities that Pinnacle and Countrywide have in the Remaining Inventory, if any, shall attach to the Escrow Account. Nothing herein is intended to limit Pinnacle and Countrywide's rights to collect amounts in excess of the amount of the Escrow Account if the Court so determines that such amounts are due, and nothing herein limits Pinnacle and Countrywide's rights to be paid for post-petition

services in accordance with prior orders of this Court (to the extent provided) and to seek damages if such amounts as may be due are not paid.

15. Upon Pinnacle and Countrywide allowing for the removal of the Remaining Inventory from the Distribution Center pursuant to paragraph 1 herein, the Debtor shall withdraw without prejudice the Sanctions Motion. The Debtor reserves the right to re-file the Sanctions Motion in the event that Pinnacle and Countrywide fail to comply with Paragraphs 2, 3 and 6 of this Stipulated Order, subject to the rights of Pinnacle and Countrywide to file an objection to the Sanctions Motion and to file any cross-motion against the Debtor.

16. The Debtor shall withdraw with prejudice the Sanctions Motion upon Pinnacle and Countrywide's complying with Paragraphs 2, 3 and 6 of this Stipulated Order. Upon withdrawing the Sanctions Motion with prejudice, the Debtor, its successors and assigns, shall waive any and all claims arising out of or relating to the Remaining Inventory, and will be forever barred from asserting any such claims, except for those claims reserved under paragraphs 8 and 9 of this Stipulated Order.

17. Except as expressly set forth herein, the parties hereto retain all of their rights with respect to any and all other disputes between them or claims each one has against the others or their affiliates.

THE HONORABLE JAMES S. STARZYNSKI
UNITED STATES BANKRUPTCY JUDGE

Submitted and approved:

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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 21 2001

Mary B. Anderson