

UNITES STATES BANKRUPTCY COURT

DISTRICT OF NEW MEXICO

IN RE: )  
 )  
FURR'S SUPERMARKETS, INC., ) Case No. 01-10779-SA  
 )  
Debtor. ) Chapter 11

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THIRD POST-CLOSING ORDER ARISING FROM EMERGENCY HEARING  
SUPPLEMENTING FINAL ORDER (1) AUTHORIZING DEBTOR TO OBTAIN SECURED  
FINANCING, (2) GRANTING ADEQUATE PROTECTION AND (3) GRANTING OTHER  
RELIEF, TO PERMIT SHORT-TERM FINANCING  
AND USE OF CASH COLLATERAL

This matter came before the Court upon the Motion For Third Order Supplementing Final Authorizing Debtor To Obtain Secured Financing, and for Use of Cash Collateral, in November, 2001, and for Expedited Preliminary Hearing to Avoid Irreparable Harm, filed October 19, 2001, (the "Motion") by Furr's Supermarkets, Inc., debtor and debtor-in-possession (the "Debtor"). By the Motion, the Debtor seeks the entry of an order authorizing it to use the cash collateral of, and borrow money from, Metropolitan Life Insurance Company ("MetLife"), Fleet Capital Corporation ("Fleet"), Bank of America, N.A. ("BofA") and Heller Financial, Inc. ("Heller"), for itself as a Lender and as agent for the Lenders (collectively, MetLife, Fleet, BofA and Heller shall be referred to as the "Lenders"), and to give security therefore; and

The Court has examined the Motion; the Final Order (1) Authorizing Debtor to

Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief dated March 14, 2001 (the “Final Financing Order”), the Final First Order Supplementing Final Order (1) Authorizing Debtor to Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief, entered September 25, 2001 (the “First Post-Closing Financing Order”)<sup>1</sup>, and the Final Second Post-Closing Order Supplementing Final Order (1) Authorizing Debtor to Obtain Secured Financing, (2) Granting Adequate Protection and (3) Granting Other Relief, to Permit Short-Term Financing and Use of Cash Collateral (the “Second Post-Closing Financing Order”); and

The Court has heard the statements of counsel and the evidence in support of and in opposition to the motion resulting in the First Post-Closing Financing Order at a hearing before the Court; has heard the statements of counsel in support of and in opposition to the Motion resulting in the Second Post-Closing Emergency Financing Order at a hearing before the Court, and has heard the statements of counsel and the evidence in support of and in opposition to the Motion resulting in entry of this Order; and

On October 19, 2001, the Debtor served a copy of the Motion and notice of the emergency hearing thereon on the persons on the limited mailing list maintained in connection with this case and transmitted copies by facsimile to counsel as set forth in a Certificate of Service filed October 26, 2001; and

It appears to the Court that (i) the Court has jurisdiction to enter this Order pursuant to 28 U.S.C. §§157(b)(2) and 1334, (ii) this is a core proceeding as defined in 28 U.S.C. §157(b)(2) and (iii) notice of the Motion and the emergency ~~and final~~ <sup>was</sup> Hearing ~~were~~ adequate under the circumstances; and

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<sup>1</sup> Capitalized terms used herein and not otherwise defined have the meanings assigned in the Final Financing

THE COURT FINDS, IN ADDITION TO THE ORAL FINDINGS OF FACT AND CONCLUSIONS OF LAW ANNOUNCED PURSUANT TO BANKRUPTCY RULE 7052, THAT:

A. The Termination Date of the DIP Facility has occurred and has been declared and noticed.

B. The Debtor and the Lenders agree that the Aggregate Proceeds (excluding, except as otherwise provided in the First Supplemental Financing Order and Second Post-Closing Financing Order, Avoidance Action recoveries, if any) constitute cash collateral of the Lenders. The Official Committee of Unsecured Creditors asserts that some portion of the Aggregate Proceeds might not constitute cash collateral of the Lenders.

C. The Debtor desires that the Lenders make available to it post-petition credit and/or cash collateral for weeks ended November 3, 2001, November 10, 2001, November 17, 2001, November 24, 2001, and December 1, 2001, solely to fund the types and amounts of itemized expenditures set forth in the Budget attached to this Order (the "November Budget"). Lenders have not consented to the use of cash collateral other than as set forth herein and the Debtor has no other source of financing.

D. The terms of this Order have been negotiated at arms-length with all parties represented by experienced counsel, are fair and reasonable under the circumstances, are for reasonably equivalent value and fair consideration, and are in good faith as that term is used in section 364(e) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330 (the "Bankruptcy Code"). Accordingly, the Lenders, in making advances pursuant to this Order, are entitled to the protections described in section 364(e) of the Bankruptcy Code.

E. The use of cash collateral and secured financing approved by this order is

necessary to prevent immediate and irreparable harm to the estate pending a final hearing on the Motion.

THEREFORE IT IS HEREBY ORDERED THAT:

1. The Debtor is hereby authorized to borrow money from the Lenders for the weeks ended November 3, 2001, November 10, 2001, November 17, 2001, November 24, 2001, and December 1, 2001 solely to fund the types and amounts of itemized expenditures set forth in the November Budget for those weeks, which the Lenders have agreed to fund (including funding of obligations for such itemized expenditures incurred during such weeks in accordance with the November Budget that are unpaid as of the date of any default or the expiration of the November Budget). As adequate protection, any amounts of Aggregate Proceeds used (other than to repay indebtedness owed to the Lenders), including all funds used by the Debtor since the payment of the DIP Indebtedness even if used prior to the date of this Order (together with loans made pursuant to this Order, the "Advances"), shall be secured by a replacement lien (junior to any Prior Claims, and junior to any other claims of Premier Distributing Company, Inc., New Mexico Beverage Company, Southern Wine & Spirits of New Mexico, National Distributing Company, Desert Eagle Distributing Company of New Mexico L.L.C. and Joe G. Maloof & Company if and to the extent that such claims attach to specific collateral and are ultimately determined to be prior to the liens of the Lenders against such collateral) in favor of the Lenders against all assets of the estate, and proceeds thereof, and shall be deemed to be advanced by the Lenders under the Final Financing Order and shall, notwithstanding the occurrence of the Termination Date, be treated as DIP Indebtedness under the Final Financing Order and be entitled to all the benefits thereof, including, without limitation, the security interests set forth in Section 6 thereof, and the super priority claim status and prohibition on Section 506(c) charges

set forth in Section 9 thereof. In addition, Lenders are granted a security interest with all rights described above in any and all avoidance claims and any and all proceeds therefrom (the "Avoidance Action Collateral"), including but not limited to actions under Sections 544, 545, 547, 548, 549, and/or 553 and any other such types of estate recoveries, (which shall collectively be referred to herein as "Avoidance Actions") to secure the Advances, other than (i) Advances, if any, to pay any claims presently prior to the interests of the Lenders in the Sale Proceeds or Aggregate Proceeds and (ii) 50% of the Advances made to fund the November 2001 Budget. The inclusion of a lien on Avoidance Actions is in addition to all rights previously held by the Lenders under the Final Financing Order.

2. The payment to be made to Davis & Pierce P.C. in accordance with the November Budget shall be paid shall be paid from the Carve-Out specified in paragraph 3 of the Final Financing Order following the occurrence of a Carve-Out Event.

3. Notwithstanding the occurrence of a Termination Event, Post-Petition Collections shall continue to be deposited in Blocked Accounts and applied as set forth in Section 10 of the Final Financing Order.

4. The proceeds from any recovery of the Debtor from and after the date of the payment in full of the DIP Indebtedness shall be applied to the amounts advanced pursuant to this Order, subject to the rights of the Lenders granted herein, in the Final Financing Order, the First Post Closing Financing Order, and/or the Second Post-Closing Financing Order to reclaim, reapply and reallocate in respect of any monies; provided that, notwithstanding anything else in this Order, the provisions of this Order grant the Lenders the right to apply Avoidance Action Collateral only to repayment of Advances, other than Advances, if any, to pay any claims

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presently prior to the interests of the Lenders in the Sale Proceeds or Aggregate Proceeds or to

pay 50% of the Advances made to fund the November 2001 Budget. (without prejudice to any rights, benefits and provisions granted in favor of any of the Lenders under the Final Financing Order and related documentation, all of which rights, benefits and provisions remain extant and unlimited by this Order).

5. The provisions of this Order shall be binding upon and inure to the benefit of the Lenders, the Debtor and their respective successors and assigns to the maximum extent permissible under applicable law, including, without limitation, any trustee, examiner or responsible person appointed in this case or any subsequent Chapter 11 or Chapter 7 case.

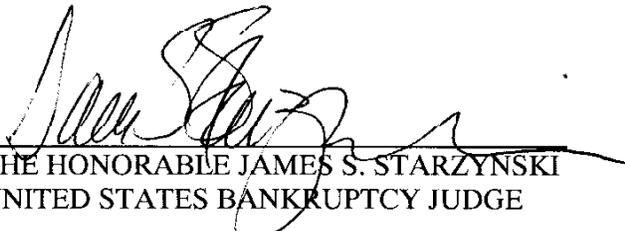
6. The Debtor shall not, without the Lenders' prior consent, seek to modify this Order. Notwithstanding anything contained herein, if any provision of this Order is hereafter modified by Court order, such modifications shall not affect the validity of any DIP Indebtedness outstanding immediately prior to the effective time of such modification, or the validity or enforceability of any lien, priority or right authorized hereby with respect to any such DIP Indebtedness. The rights, benefits and provisions granted in favor of any of the Lenders hereunder or under the Final Financing Order and related documentation shall continue notwithstanding repayment of DIP Indebtedness.

7. Each of the terms and conditions hereof constitutes a part of this Court's authorization under section 364(e) of the Bankruptcy Code, and is therefore, subject to the protections contained in section 364(e) of the Bankruptcy Code.

8. The amounts budgeted for Third Party Services in the Short Term Budget (as those terms are defined in the First Post-Closing Financing Order), to the extent not incurred prior to expiration of the period covered by the Short Term Budget, may be incurred and funded after the expiration of such Short Term Budget period.

9. All terms of the First Post-Closing Financing Order and Second Post-Closing Financing Order remain in effect and are not superceded by this Order; except the references in paragraph 2 of First Post-Closing Financing Order to "Premier Distributing Company, Inc., New Mexico Beverage Company, Southern Wine & Spirits of New Mexico, and National Distributing Company" shall be deemed to refer to "Premier Distributing Company, Inc., New Mexico Beverage Company, Southern Wine & Spirits of New Mexico, National Distributing Company, Desert Eagle Distributing Company of New Mexico L.L.C. and Joe G. Maloof & Company."

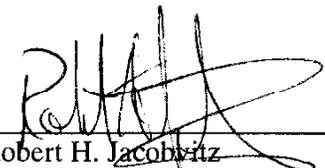
IT IS SO ORDERED.



THE HONORABLE JAMES S. STARZYNSKI  
UNITED STATES BANKRUPTCY JUDGE

Submitted and approved by:

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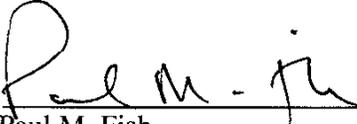
I hereby certify that a true and correct copy of the foregoing was either electronically transmitted, faxed, delivered or mailed to the listed counsel and parties on:

OCT 26 2001

Mary B. Anderson

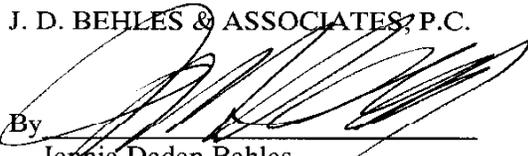
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POST CLOSING OPERATING BUDGET

	WK END 11/03/01 18	WK END 11/10/01 18	WK END 11/17/01 18	WK END 11/24/01 18	WK END 12/01/01 18	TOTAL
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HEADCOUNT						
PAYROLL						
SALARIES	28.0	28.0	28.0	28.0	28.0	140.0
BENEFITS/TAXES	2.2	2.2	2.2	2.2	2.2	11.0
TOTAL PAYROLL	30.2	30.2	30.2	30.2	30.2	151.0

CONSULTING FEES	5.0	5.0	5.0	5.0	5.0	25.0
RENT	25.0	-	-	-	-	25.0

OPERATING COSTS						
CHAIRMAN/VICE CHAIRMAN	-	-	-	-	-	-
DATA CENTER	10.0	10.0	10.0	10.0	10.0	50.0
UTILITIES	2.0	2.0	2.0	2.0	2.0	10.0
TELEPHONE	2.2	2.2	2.2	2.2	2.2	11.0
SUPPLIES	0.3	0.3	0.3	0.3	0.3	1.5
HOUSEKEEPING	0.2	0.2	0.2	0.2	0.2	1.0
SECURITY	0.3	0.3	0.3	0.3	0.3	1.5
POSTAGE	0.3	0.3	0.3	0.3	0.3	1.5
MISC EXPENSE (Incl. \$12,000 for services)	16.0	4.0	4.0	4.0	4.0	32.0
TAXES	-	-	-	-	-	-
TOTAL OPERATING COSTS	31.3	19.3	19.3	19.3	19.3	108.5

JTW						
US TRUSTEE FEES	-	50.0	-	-	-	50.0
DAVIS & PIERCE PC	-	-	-	5.0	-	5.0
CARRYING/CLOSURE COSTS-WHSE	48.0	-	10.0	-	-	15.0
RETENTION	-	-	-	-	10.0	78.0
TOTAL	48.0	60.0	25.0	15.0	10.0	84.0

SUB TOTAL	48.0	60.0	25.0	15.0	10.0	212.0
CUM	48.0	108.0	133.0	148.0	158.0	212.0
GRAND TOTAL	139.5	1427.5	114.5	79.5	59.5	508.5
CUM	139.5	1427.5	242.0	321.5	391.0	521.5

EXHIBIT  
A