

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

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U.S. BANKRUPTCY COURT
ALBUQUERQUE, N.M.

In Re:

FURR'S SUPERMARKETS, INC.,

Chapter 11
Case Nos. 01-10779-SA

Debtor.

No Hearing Date

**APPLICATION OF CHAIRPERSON OF THE
OFFICIAL UNSECURED CREDITORS' COMMITTEE FOR
ORDER PURSUANT TO 11 U.S.C. § 1103
AUTHORIZING THE RETENTION AND
EMPLOYMENT OF CHANIN CAPITAL PARTNERS LLC
TO SERVE AS INVESTMENT BANKER TO THE COMMITTEE**

The Official General Unsecured Creditors' Committee (the "Committee") of the Debtor herein, by its counsel, Pepper Hamilton LLP, for its Application For Order Pursuant to 11 U.S.C. § 1103 Authorizing the Retention and Employment of Chanin Capital Partners LLC and its affiliate Chanin & Co. LLC (collectively, for purposes of this Application only, "Chanin") to serve as Investment Banker for the Committee, states as follows:

1. On February 8, 2001, the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code (the "Code").
2. On or about February 13, 2001, the United States Trustee appointed the Committee under section 1102 of the Code.
3. Pursuant to the provisions of section 1103 of the Code, on May 9, 2001, at a regularly scheduled meeting of the Committee in Dallas, Texas, at which all of its members

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were present, and during a subsequent telephonic conference call of the full Committee, the Committee selected and authorized the employment of Chanin to serve as its investment banker.

4. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§157 and 1334. Handling of this case and this Application in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are §§ 328 and 1103, as supplemented by Rule 2014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

RELIEF REQUESTED

5. By this Application, the Committee seeks authority to retain and employ Chanin to act as its investment banker and provide financial advisory services during this Chapter 11 case, pursuant to sections 328 and 1103 of the Code, effective immediately.

6. The Committee will retain Chanin to provide investment banking and financial advisory services pursuant to the engagement letter attached hereto as Exhibit A.

7. The Committee requests that Chanin immediately commence work on this case in order to perform the certain services and analyses as may be requested by the Committee, including: (a) assist the Committee in developing, evaluating, structuring and negotiating the terms and conditions of a Plan; (b) assist the Committee in identifying and evaluating a potential acquisition of the Debtor as a going concern; and (c) advise and assist the Committee, in consultation with the Debtor and its professional, in negotiations with potential acquirers of the Debtor as a going concern. The scope of retention is set forth in more detail in Exhibit A.

8. The principal focus of Chanin’s engagement is to enable the Committee to independently evaluate the Debtor’s recommendation respecting any sale transaction or proposed

plan of reorganization. By engaging Chanin, the Committee does not intend to expand its role with respect to the future of the Debtor beyond that authorized by the Code.

9. The Committee seeks to retain Chanin because of its extensive experience in the field of investment banking and valuation in general and in the restructuring businesses in particular. The Committee believes that Chanin is both well qualified and uniquely able to assist it in this chapter 11 case in an efficient and timely manner.

10. The Committee proposes that Chanin be retained as its investment banker in connection with this chapter 11 case on the terms set forth herein.

DISINTERESTEDNESS AND LACK OF ADVERSE INTEREST

11. To the best of the Committee's knowledge, and based upon the Affidavit of Randall L. Lambert (the "Affidavit") Chanin does not represent any other entity having an interest adverse interest to the Committee in connection with the case. Furthermore, to the best of the Committee's knowledge, Chanin has no connection with the Debtor, or its significant creditors, their attorneys or accountants, or another party in interest in this Chapter 11 case, or the United States Trustee's Office, except as stated in the Affidavit.

a. As is discussed in more detail in the Affidavit, from time to time Chanin or its affiliates have provided, currently provide, and may in the future continue to provide professional services to certain of the Debtor's creditors or other parties in interest in matters unrelated to this chapter 11 case.

b. (b) Chanin believes that the relationships described herein and in the Affidavit do not cause Chanin to lack "disinterestedness" or to represent an entity having an adverse interest in connection with this case. Should the Court approve its retention, Chanin

will retain its customary confidentiality procedures in connection with services it provides in this case, and will not, unless specifically authorized by the Court, represent any other party in connection with this case. Because Chanin is a nationwide firm with many client relationships, and because the Debtor is a very large enterprise, Chanin is unable to state with certainty that every client relationship or other connection has been disclosed. In this regard, if Chanin discovers additional information that it determines requires disclosure, it will file a supplemental disclosure with the Court promptly.

TERMS OF RETENTION

12. Subject to Court approval, and in accordance with § 330(a) of the Code, compensation will be payable to Chanin as set forth in more detail on Exhibit A, which envisions charges on a monthly basis (the “Monthly Advisory Fee”) and fees in an amount depending on the nature and amount of any sale or investment transaction (the “Transaction Fee”). The Monthly Advisory Fee is set at \$100,000 per month. The Transaction Fee equals one percent (1.0%) of enterprise value of the Debtor as determined in an asset sale or pursuant to a Plan, in excess of one hundred and sixty million dollars (\$160,000,000). In addition, Chanin shall be entitled to a monthly reimbursement of reasonable out-of-pocket expenses incurred in connection with the services to be provided to the Committee, including but not limited to all reasonable travel expenses (coach fare), computer and research charges, messenger services and long-distance telephone calls incurred by Chanin in connection with the services to be provided to the Committee. All fees plus reimbursement of reasonable and documented out-of-pocket expenses as billed will be due upon the first of each month to Chanin.

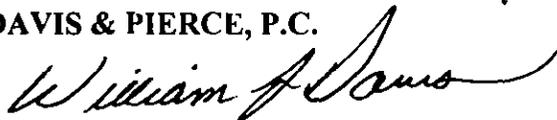
13. The scope of Debtor's indemnification of Chanin shall be determined by the issues raised with respect to the retention of P.J. Solomon, Debtor's investment banker.

14. The Affidavit, made pursuant to Bankruptcy Rule 2014(a) of the Federal Rules of Bankruptcy Procedure, has been filed contemporaneously herewith.

WHEREFORE, the Committee respectfully requests that the Court enter an order approving and authorizing its selection of Chanin, as investment banker to the Committee in these proceedings, said appointment to be effective immediately.

Respectfully submitted,

DAVIS & PIERCE, P.C.



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Albuquerque, NM 87103

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-and-

PEPPER HAMILTON, LLP

Stuart Hertzberg, Esq.

I. William Cohen, Esq.

100 Renaissance Center, #3600

Detroit, Michigan 48243

PH# (313) 259-7110

The undersigned hereby certifies
that a true and accurate copy of
the foregoing was mailed this
17th day of May, 2001.

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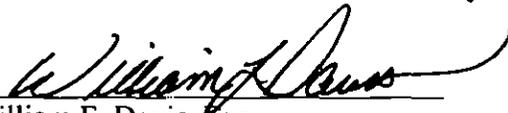
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William F. Davis, Esq.



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Los Angeles, CA 90025
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May 11, 2000

Privileged and Confidential

Official Committee of Unsecured Creditors of
Furr's Supermarkets, Inc.

James P. Salvadori, Chairperson
One ConAgra Drive
Mail Code: CC334
Omaha, NE 68102

Mr. Chairman:

The purpose of this letter (the "Agreement") is to confirm the agreement for the engagement of Chanin Capital Partners LLC and its affiliate Jeffrey Chanin & Co. LLC ("Chanin" or the "Advisor") as investment banker to the Official Committee of Unsecured Creditors of Furr's Supermarkets, Inc. (the "Committee").

1. **Engagement:** Chanin is being retained to provide financial advisory services to the Committee in connection with Furr's Supermarkets, Inc.'s (the "Company" or "Debtor") restructuring of its indebtedness and its Chapter 11 case, including the analysis, consideration and development of a Chapter 11 plan of reorganization (the "Plan"). Upon retention, Chanin in conjunction with other advisors retained by the Committee will perform the following services and analyses as may be requested by the Committee:
 - (a) Conduct an analysis of the Company's operations, business strategy, and competition as well as an analysis of the industry dynamics affecting the Company and a Plan;
 - (b) Perform an analysis of the Company's financial condition, business plans, operating forecasts, management, and the prospects for its future performance;
 - (c) Conduct a financial evaluation of the ongoing operations of the Company;
 - (d) Assist in the determination of an appropriate capital structure for the Company;
 - (e) Determine a theoretical range of values for the Company on a going concern basis;
 - (f) Assist the Committee in developing, evaluating, structuring and negotiating the terms and conditions of a Plan;
 - (g) Assist the Committee in identifying and evaluating a potential acquisition of the Company as a going concern;

EXHIBIT "A"



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- (h) Advise and assist the Committee in negotiations with potential acquirers of the Company as a going concern;
- (i) Evaluate and monitor the sales process for the Company;
- (j) Advise and assist the Committee in its efforts to evaluate the terms of debtor-in-possession financing;
- (k) Advise the Committee on the timing, nature, and terms of new securities, other consideration or other inducements to be offered pursuant to the restructuring relating to the chapter 11 case;
- (l) Assist the Committee in preparing documentation required in connection with the restructuring of the existing debt obligations;
- (m) Provide testimony, as necessary, in any proceeding before the Bankruptcy Court; and
- (n) Provide the Committee with other appropriate general restructuring advice.

The advisory services and compensation arrangements set forth herein do not encompass other investment banking or financial advisory services not set forth in this paragraph 1.

2. **Term of Agreement:** This Agreement shall commence upon its execution by both parties and shall continue unless either party gives 30 days prior written notice of termination to the other party. Upon any termination, the provisions of Paragraph 3 (to the extent applicable) shall survive the termination of this Agreement to the extent such provisions relate to the payment of fees due on or before the effective date of termination (in the event of any termination which is other than on the first of the month, the pro rata portion of the monthly fees referred to in Paragraph 3(a) for the month of termination shall be deemed to be due on the effective date of termination) and expenses incurred on or before the effective date of termination and the provisions of Paragraphs 6, 7, 8, 9 and 10 shall survive the termination of this Agreement and shall remain in effect. Additionally, if this Agreement is terminated by the Committee, other than for cause, Chanin shall be entitled to payment of the Restructuring Transaction Fee if either there is a sale of substantially all of the Company's assets or a plan of reorganization is approved in the Chapter 11 case and is consummated within 12 months of the effective date of such termination.
3. **Fees and Expenses:** All fees and expenses hereunder shall be paid subject to application for and allowance by United States Bankruptcy Court District of New Mexico.



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- (a) Monthly Advisory Fee: The Company shall pay Chanin a fee of \$100,000 per month (the "Monthly Fees") for the term of the engagement. The engagement shall have a minimum term of four (4) months. The Monthly Fees shall be paid in advance on the first day of each month.
- (b) Transaction Fee: In addition to the foregoing Monthly Fees, the Company shall pay Chanin a restructuring transaction fee (the "Restructuring Transaction Fee") equal to one percent (1.0%) of enterprise value of the Company as determined in an asset sale or pursuant to a Plan, in excess of one-hundred and sixty million dollars (\$160,000,000) within 30 days after the closing of the asset sale or the effective date of a Plan.
- (c) Expense Reimbursement: Chanin shall be entitled to monthly reimbursement of reasonable out-of-pocket expenses incurred in connection with the services to be provided under this Agreement. Monthly Fees plus reimbursement of reasonable and documented out-of-pocket expenses as billed are due upon the first of each month to Chanin at the address listed above.

Out-of-pocket expenses shall include, but not be limited to all reasonable travel expenses (coach airfare), computer and research charges, messenger services and long-distance telephone calls incurred by Chanin in connection with the services to be provided to the Committee.

4. Company Information: The Committee understands that Chanin shall not be liable for inaccuracies in any Information provided by or on behalf of the Company to Chanin. The Committee will use reasonable efforts to assure that all Information supplied to Chanin by or on behalf of the Company will, as of its respective dates, be accurate and complete in all material respects.
5. Indemnification: In consideration of the Advisor's agreement to perform services, the Company shall:
 - (a) Indemnify and hold harmless the Advisor and any of its directors, officers, employees, consultants or agents, and Company members (each, individually, an "Indemnified Person") from and against any losses, claims, expenses, damages or liabilities to which such Indemnified Person may become subject arising in any manner out of or in connection with Chanin's engagement and/or the rendering of services by Chanin hereunder, except to the extent that such losses, claims, damages or liabilities are finally determined in judicial rulings to have resulted in whole or part from the gross negligence or willful misconduct of any Indemnified Person; and
 - (b) Reimburse such Indemnified Person for reasonable legal or other expenses, as they are incurred, that arise in connection with investigating, preparing to defend or defending any lawsuit, claim or proceeding and any appeals therefrom arising in any manner out of or in connection with the rendering of services by any Indemnified Person pursuant to this Agreement to the Committee, if such Indemnified Person is entitled to indemnification under Paragraph 5(a) of this Agreement above; provided, however, that in the event a final judicial



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determination is made to the effect specified in Paragraph 5(a) of this Agreement above, such Indemnified Person promptly would remit to the Company any amounts reimbursable under this Agreement.

6. Bankruptcy Court Approval: This Agreement is subject to the entry of an order of the court having jurisdiction over the Company's bankruptcy case approving the retention of Chanin pursuant to the terms hereof. The Committee shall use commercially reasonable efforts to obtain prompt authorization of the retention of Chanin, *nunc pro tunc* to the date of this agreement, on the terms and provisions in this Agreement pursuant to section 328(a) of the Bankruptcy Code. The order approving the Agreement and authorizing the retention shall be acceptable to Chanin in its sole reasonable discretion.
7. Entire Agreement: This Agreement represents the entire Agreement between the parties and may not be modified except in writing signed by both parties. This Agreement may be executed in counterparts, each of which shall constitute an original. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.
8. Arbitration: This Agreement will be governed by, and construed in accordance with, the laws of the State of New York applicable to agreements made and to be performed entirely in such state. Except to the extent that the parties shall be permitted to adjudicate any dispute in the bankruptcy court having jurisdiction over the Company's chapter 11 case and the bankruptcy court desires to exercise such jurisdiction, each of the parties hereto agrees to submit any claim or dispute arising out of or related to this Agreement to private and confidential arbitration by a single arbitrator selected in accordance with the rules of the American Arbitration Association. The arbitration proceedings shall be governed by the Commercial Rules of Arbitration of the American Arbitration Association and shall take place in the Borough of Manhattan, New York City, New York. The arbitrator shall have the power to order discovery and the authority to award any remedy or relief that a court of the State of New York could order or grant, including without limitation specific performance. The decision of the arbitrator shall be final and binding on each of the parties and judgment thereon may be entered in any court having jurisdiction. If the bankruptcy court refuses to exercise jurisdiction, this arbitration procedure is intended to be the exclusive method of resolving any claim arising out of or related to this Agreement, including any claim as to the validity of this Agreement. Each party agrees to the personal and subject matter jurisdiction of such arbitration for the resolution of any such claim, including any issue relating to this arbitration provision. In the event of any arbitration arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to an award of actual attorneys' fees and costs incurred in connection with the arbitration. Nothing in this paragraph shall pertain to or affect the authority of the bankruptcy court to consider and rule upon Chanin's applications for interim or final compensation pursuant to this Agreement.
9. Other Matters: If this letter correctly sets forth our Agreement on the matters covered herein, please so indicate by signing and returning the enclosed copy of this letter and signing and retaining the



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duplicate we are enclosing for your records. Upon execution by both parties, this letter will constitute a legally binding Agreement between the Committee and Chanin.

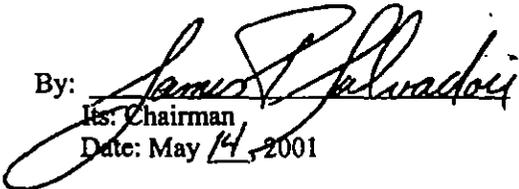
We trust the foregoing terms and provisions are agreeable to you, and request that you sign and return the enclosed copy of this Agreement to us at your earliest convenience.

Very Truly Yours,

CHANIN CAPITAL PARTNERS LLC
Randall Lambert
Managing Director

OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF FURR'S SUPERMARKETS, INC.

By:


Its Chairman

Date: May 14, 2001