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DISTRICT OF NEW MEXICO
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U.S. BANKRUPTCY COURT
ALBUQUERQUE N.M.

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In re : 11-01-107~~99~~³⁷⁹-SA

FURR'S SUPERMARKETS, INC., : Chapter 11

Debtor. :

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MOTION FOR ORDER AUTHORIZING PAYMENT OF
INTERIM COMPENSATION AND
REIMBURSEMENT OF EXPENSES OF DEBTOR'S PROFESSIONALS

Furr's Supermarkets, Inc. (the "Debtor") submits this motion (the "Motion") for an order authorizing interim compensation and reimbursement of expenses of professionals retained by the Debtor in this Chapter 11 case. In support of this Motion, the Debtor respectfully represents as follows:

BACKGROUND

A. The Chapter 11 Filing

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

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B. The Debtor's Business

2. The Debtor is a leading regional supermarket chain, with operations in New Mexico and Western Texas. The Debtor has a leading market share in this region. The Debtor employs some 4,900 individuals, and operates seventy-one stores.

3. The Debtor's stores offer a broad selection of grocery, meat, poultry, seafood, dairy, fresh fruits, vegetables and frozen food products. The stores also offer an extended line of non-food products, health and beauty care products, housewares, general merchandise and, in many instances, in-store pharmacies.

JURISDICTION AND VENUE

4. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and this matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper under 28 U.S.C. §§ 1408 and 1409.

RETENTION OF PROFESSIONALS

5. Contemporaneously with the filing of its Chapter 11 petition, the Debtor filed applications seeking approval of its employment and retention of Skadden, Arps, Slate, Meagher & Flom LLP as general bankruptcy counsel; Jacobvitz Thuma & Walker, P.C. as New Mexico co-counsel; and PricewaterhouseCoopers LLP as financial advisors.

6. Under section 331 of the Bankruptcy Code, all retained professionals are entitled to submit applications for interim compensation and reimbursement of expenses every 120 days, or more often if the Court permits.

PROCEDURES REQUESTED

7. The Debtor requests that procedures for compensating and reimbursing its court-approved professionals on a monthly basis be established, in accordance with regular procedures of this Court. The requested procedures would require each professional to present to the Debtor, on a monthly basis, a detailed statement (a "Fee Statement") of services rendered and expenses incurred by such professional during the prior month. The Debtor would be authorized to pay 75% of the amount of fees billed for the month, 100% of expenses billed for the month, and 100% of gross receipts or use tax (if applicable) on fees and expenses that are payable. These payments would be subject to the Court's subsequent approval as part of the normal interim fee application process, approximately every 120 to 180 days.

APPLICABLE AUTHORITY

8. Section 331 of the Bankruptcy Code provides, in relevant part, as follows:

A trustee, an examiner, a debtor's attorney, or any professional person employed under Section 327 or 1103 of this title may apply to the Court not more than once every 120 days after an order for

relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under Section 330 of this title. . . .

11 U.S.C. § 331 (1998).

9. Section 105(a) of the Bankruptcy Code provides, in relevant part, as follows:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title . . . shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules. . . .

11 U.S.C. § 105(a) (1998).

10. The procedures outlined above are consistent practice in other chapter 11 cases in this Court. In addition to affording the Debtor the benefits described above, they appropriately avoid requiring the Debtor's professionals to fund its reorganization case. In re Int'l Horizons, Inc., 10 B.R. 895, 897 (Bankr. N.D. Ga. 1981) (establishing procedures for monthly interim compensations). Appropriate factors to consider implementing these procedures include "the size of these reorganization cases, the complexity of the issues involved, and the time required on the part of the attorneys for the debtors in providing services necessary to achieve a successful reorganization of the debtors." Id. at 897-98. The Debtor

submits that the procedures sought herein are appropriate considering the above factors.

11. The Debtor has served a copy of this Motion on the United States Trustee, the Debtor's secured creditors, the DIP Lenders, all parties who have filed notices of appearance, and its twenty largest unsecured creditors. Notice of this Motion was also served with the notice of commencement of this chapter 11 case.

WHEREFORE, the Debtor respectfully requests that the Court enter an order (i) establishing procedures for interim compensation and reimbursement of

expenses of its professionals on a monthly basis, and (ii) granting the Debtor such other and further relief as is just and proper.

Dated: Albuquerque, New Mexico
February 13, 2001

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