

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.,
a Delaware corporation,

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

Debtor.

**DEBTOR'S MOTION TO EMPLOY JACOBVITZ,
THUMA & WALKER, P.C. AS COUNSEL FOR THE DEBTOR**

The Debtor and Debtor in Possession, Furr's Supermarkets, Inc. (the "Debtor"), pursuant to 11 U.S.C. § 327(a), requests that the Court approve its employment of Jacobvitz, Thuma & Walker, a Professional Corporation ("JTW") to represent Debtor in all matters and proceedings filed in or in connection with such case, as Debtor may request, subject to paragraph 2 below. Debtor further requests that the Court approve its employment of JTW to represent Debtor in any other matters as Debtor may request of JTW and JTW may agree to perform, including but not limited to corporate and transactional work and real estate and leasing matters.

In support of this Motion (the "Motion"), Debtor states:

1. On February 8, 2001 (the "Petition Date"), Debtor commenced this bankruptcy case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Bankruptcy Code §§1107(a) and 1108, Debtor has retained possession of its assets, as Debtor in Possession, and is continuing to operate its business.

2. Debtor wishes to employ JTW as counsel for Debtor, in all matters and proceedings in this bankruptcy case, in all other matters in which Debtor requires bankruptcy counsel, and in such other matters as Debtor may request of JTW and JTW may

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agree to perform; except JTW will not advise or otherwise represent Furr's, as bankruptcy counsel or otherwise, with respect to any issues specifically relating to First Security Bank of New Mexico N.A. or any other creditors of Furr's that JTW represents in any matters wholly unrelated to Furr's or this bankruptcy case (with respect to which Debtor's separate counsel will represent and advise Debtor). JTW is qualified to represent Debtor as debtor in possession in this case. JTW has represented in its disclosure filed pursuant to Bankruptcy Rules 2014 and 2016 that except for its representation of First Security Bank of New Mexico N.A. in matters wholly unrelated to Furr's or this bankruptcy case, to JTW's knowledge it does not represent any creditors of Furr's.

3. In general, the professional services JTW may render on behalf of the Debtor include (but are not limited to):

(a) Representing and rendering legal advice to Debtor regarding all aspects of conducting this bankruptcy case, including, without limitation: the continued operation of Debtor's business, meetings of creditors, claims objections, adversary proceedings, plan confirmation, and all hearings before this Court;

(b) Preparing on behalf of Debtor necessary petitions, answers, motions, applications, orders, reports and other legal papers;

(c) Assisting Debtor in taking actions required to effect reorganization under chapter 11 of the Bankruptcy Code;

(d) Performing legal services necessary or appropriate for Debtor's continued operation of its business; and

(e) Performing any other legal services for Debtor as Debtor deems appropriate and JTW agrees to perform.

4. A copy of JTW's engagement letter with the Debtor, dated February 7, 2001 ("Engagement Letter"), is attached hereto as Exhibit A and incorporated herein by reference.

5. To the best of Debtor's knowledge, information and belief, JTW has no connection with Debtor, its creditors, or any other party in interest or their respective attorneys, other than any connections set forth in JTW's statement pursuant to Bankruptcy Rules 2014 and 2016 (the "JTW Disclosure") filed concurrently with this Motion.

6. The fees, costs and gross receipts tax that JTW will charge Debtor are set forth in the Engagement Letter.

7. By separate motion, JTW will request that the Debtor be authorized to make interim payments to JTW on a monthly basis upon receipt of JTW's billing statements and prior to the Court's determination of the allowability of JTW's compensation.

8. JTW's employment should be made effective as of the Petition Date.

WHEREFORE Debtor requests approval of the Court to employ JTW as its counsel pursuant to 11 U.S.C. § 327(a) under the terms of the Engagement Letter and this Motion, effective as of the Petition Date; and to make interim payments to JTW prior to allowance of compensation, as described above.

APPROVED BY DEBTOR:
FURR'S SUPERMARKETS, INC.

By: 

JACOBVITZ, THUMA & WALKER,
a Professional Corporation

By: 

Robert H. Jacobvitz
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Attorneys for the Debtor
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February 7, 2001

Mr. Thomas G. Dahlen
4411 The 25 Way N.E., Suite 100
Furr's Supermarkets, Inc.
Albuquerque, New Mexico 87109

Re: Engagement Letter

Dear Tom:

This letter confirms the terms and conditions under which Jacobvitz, Thuma & Walker, a Professional Corporation (the "Firm") has been and will continue to represent Furr's Supermarkets, Inc., a Delaware corporation ("Furr's").

1. Scope of Engagement

The scope of our engagement will be to represent Furr's, if Furr's commences a chapter 11 bankruptcy case, as local co-bankruptcy counsel with Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden"), or such other lead bankruptcy counsel as Furr's may designate, in all matters and proceedings filed in or in connection with such case, except as provided in paragraph 8 below, as Furr's (or Skadden or other lead bankruptcy counsel) may request. The Firm may also represent Furr's in other matters, as Furr's may request of JTW and JTW may agree to perform, including but not limited to corporate and transactional work and real estate and leasing matters.

2. Fees and Expenses

Furr's has agreed to pay the Firm for attorney's services at the Firm's regular hourly rates. The amount the Firm bills Furr's will depend on the time spent on the Furr's' work and the amount of reimbursable costs and expenses incurred on Furr's' behalf. The billing rates of attorneys currently employed by the Firm are Robert H. Jacobvitz, \$175 per hour; David T. Thuma, \$150.00 per hour; and Thomas D. Walker, \$150 per hour. Any other attorneys who may be employed by JTW will be billed at their regular hourly rates. Legal assistants will be charged at \$50.00 per hour. Legal work performed on a contract basis for JTW will be charged at \$125.00 per hour. The Firm will bill in one tenth of an hour increments. All rates are subject to change, although changes are infrequent. We will notify you in writing before any rate increases go into effect.

We itemize and charge separately for certain costs and expenses, such as postage, long distance telephone charges, travel, filing fees, court fees, deposition expenses, computerized legal research, and expert witness fees, all at cost, and telecopy charges (\$.15 per page) and photocopying (\$.10 per page). We do not charge separately for word

processing, or secretarial overtime, all of which we include as part of our overhead. We generally ask the client to pay for certain third party costs directly, such as charges for deposition transcripts, airfare and expert witness fees.

3. Billing and Payment

Our Firm bills monthly for fees and expenses, and any applicable gross receipts taxes, which are due and payable on receipt. We expect to receive payment within 30 days after our bills are rendered. Any course of conduct in accepting late payments does not modify the date payments are due.

4. Retainer

This also will confirm that Furr's has paid us a retainer in the amount of \$50,000, representing funds to be held by us in trust for the purpose of a retainer for professional services rendered and expenses and costs incurred in connection with the Firm's representation of Furr's. In addition, if in our judgment the amount of third party costs we will incur on Furr's behalf is anticipated to be substantial, we reserve the right to require a separate cost retainer, which we will deposit in the Firm's trust account and from which we will pay third party costs we incur on Furr's behalf. The Firm will draw on the retainer each month to pay the Firm's bills to Furr's for services rendered in the preceding month. If the amount of the retainer deposited in our trust account does not cover the amount of any bill, Furr's will be responsible for paying the balance. After the retainer is exhausted, Furr's will be responsible for paying the Firm's statements in full within 30 days after receipt. If there is any amount remaining in the retainer following our final billing, we will send the balance to Furr's. The Firm has the right, but not the obligation, to apply the retainer at any time to Furr's' outstanding balance. If the retainer is exhausted, the Firm also reserves the right to require an additional retainer as a condition to performing further services for Furr's. Furr's grants the Firm a security interest in and to the retainer funds, and the trust account to the extent of such funds, to secure payment of the Firm's fees and expenses, and gross receipts tax thereon, owed by Furr's to the Firm.

5. Special Provisions if Furr's Commences a Bankruptcy Case

If Furr's commences a chapter 11 case, the Firm will render a bill for services rendered through the date immediately prior to commencement of the bankruptcy case, and will draw on the retainer to pay that bill, so that all fees and expenses, and the applicable gross receipts tax thereon, owed by Furr's to the Firm are paid in full when the case is filed.

If Furr's commences a bankruptcy case, the Firm will disclose the retainer in connection with its application to the Bankruptcy Court for approval of its employment by Furr's, and will comply with any Court orders relating to the retainer. The Firm's fees, costs and gross receipts tax charged for services rendered after the filing of the bankruptcy

case will be billed subject to any required approvals of the Bankruptcy Court as to allowance and payment. Furr's will seek approval from the Bankruptcy Court to make interim payments to the Firm of 75% of fees, and 100% of reimbursable costs and applicable gross receipts tax, on a monthly basis pending Court approval of the compensation. Furr's agrees to make such interim payments to the Firm to the extent approved by the Bankruptcy Court, after the retainer is exhausted, and to pay promptly the unpaid balance of compensation upon approval of such compensation by the Bankruptcy Court. Interim payments of compensation to the Firm will be paid subject to ultimate approval of such compensation by the Bankruptcy Court. The Firm will comply with applicable local Bankruptcy Court requirements in the manner in which it renders its bills to Furr's. The Firm will assume responsibility to prepare, file, and prosecute applications for approval of its employment and fees, for which it may charge Furr's at the Firm's regularly hourly rates.

6. Attorney-Client Privilege.

While confidential communications between a client and counsel are privileged, the filing of a bankruptcy case may severely impact on this attorney-client privilege. Specifically, if a trustee is appointed in any bankruptcy case concerning a corporate debtor, the trustee will be able to compel disclosure by any counsel (including our Firm) of information communicated between the corporation and its counsel.

7. No Individual or Affiliate Representation.

The Firm is being engaged by Furr's, a corporation. Our employment does not include the representation of any individual officer, director or employee, or any affiliate. We encourage each of them to consult independent counsel if and as necessary.

8. Representation of creditors in unrelated matters.

The Firm has disclosed to Furr's that upon the Firm's review of Furr's creditor list, the Firm may learn that it represents one or more creditors of Furr's in a matter or in matters wholly unrelated to Furr's or any bankruptcy case Furr's may file. Furr's consents to the Firm representing Furr's while at the same time representing one or more such creditors in matters wholly unrelated to Furr's or any bankruptcy case Furr's may file. The Firm will not advise or otherwise represent Furr's, as bankruptcy counsel or otherwise, with respect to any issues involving any creditors of Furr's that the Firm represents. Furr's agrees that its separate counsel will represent and advise Furr's with respect to such matters. Furr's acknowledges that the Firm has disclosed that it represents First Security Bank of New Mexico, N.A. in various matters wholly unrelated to Furr's, and that the above consent by Furr's applies to the Firm's representation of First Security Bank of New Mexico, N.A.

9. Termination of the Engagement.

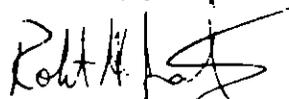
Furr's has the right to terminate our representation of Furr's at any time upon notice to us, with the understanding that Furr's will remain responsible for payment of our accrued fees and expenses, and applicable gross receipts taxes thereon. The Firm reserves the right to withdraw from representation for cause or if the terms of our engagement are not met, including timely payment of our bills or failure to remit a retainer. In addition, the Firm reserves the right to withdraw from representing Furr's in a chapter 11 case if Furr's does not have lead bankruptcy counsel (other than the Firm) qualified to undertake such representation of Furr's. If our representation of Furr's is terminated at Furr's' request, we will send Furr's' files to you or to Furr's' new counsel, at your request, subject to our right (if no bankruptcy case is pending) to hold the files pending payment of any outstanding balance Furr's owes us.

10. No Other Agreements.

This constitutes the entire understanding between Furr's and the Firm regarding our employment. By executing this agreement, Furr's acknowledges that it has read this letter agreement carefully and understands all of its terms. The agreement cannot be modified except by further written agreement signed by each party.

We appreciate your allowing our Firm to represent Furr's. Please let me know if you have any questions.

Very truly yours,



Robert H. Jacobvitz
For the Firm

RHJ

APPROVED AND AGREED TO:

FURR'S SUPERMARKETS, INC.

By _____
