

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement") is entered into this ___ day of March, 2004 by Yvette J. Gonzales (the "Trustee"), acting in her capacity as the duly appointed Chapter 7 Trustee of the Furr's Supermarkets, Inc. bankruptcy estate (the "Furr's Estate"), and Hilltop Landscape Architects and Contractors, Inc., a New Mexico corporation ("Hilltop").

RECITALS

WHEREAS, on or about January 30, 2003, the Trustee filed her Complaint to Avoid Preferential Transfers against Hilltop in the adversary proceeding captioned *Yvette J. Gonzales, Trustee v. Hilltop Landscape Architects and Contractors* in the United States Bankruptcy Court for the District of New Mexico (the "Bankruptcy Court"), Adv. Pro. No. 03-1039 S (the "Preference Action");

WHEREAS, the Trustee and Hilltop desire to settle the Preference Action and have agreed to execute this Agreement for such purpose and to extinguish the claims and obligations set forth below;

NOW, THEREFORE, it is agreed between the Trustee and Hilltop as follows:

AGREEMENT

1. Hilltop will pay the Furr's Estate \$58,000.00, payable in eighteen payments of \$3,222.22, without interest. The first payment will be made within 10 days of notice that the order approving the settlement has been entered, and the remaining 17 payments will be made on or before the first of each month thereafter. Payments shall be delivered to:

Yvette Gonzales
Box 1037
Placitas, NM 87043-1037

2. **If Hilltop defaults in any required payment, and does not cure the default within 15 days after receiving written notice of the default at the address listed below**, with a copy of notice of default faxed to its counsel Scott & Kienzle, P.A., then the amount of \$69,985.77, less any amounts already paid pursuant to paragraph 1 above (the “Judgment Amount”), shall become immediately due and payable. Upon the Trustee filing an affidavit of default in the Preference Action, the Bankruptcy Court shall enter a final judgment against Hilltop for the Judgment Amount, and the Trustee may take any lawful action to enforce and collect the Judgment Amount.

3. Upon the completion of all payments required in paragraph 1 above, the Preference Action shall be dismissed with prejudice and all claims the Trustee asserted against Hilltop in the Preference Action shall be settled, released, and forever barred.

4. The Trustee and Hilltop shall each bear their respective costs and attorneys’ fees incurred in the Preference Action and in connection with settlement thereof.

5. The Trustee and Hilltop each acknowledge having had full opportunity to consult with counsel of their choice before executing this Agreement.

6. The Trustee and Hilltop warrant and represent to the other that no promise, inducement, or agreement not expressed herein has been offered, made, or relied on, and that this Agreement contains the entire agreement between the parties.

7. This Agreement is entered into under the laws of the State of New Mexico. Any dispute concerning this Agreement shall be brought before the Bankruptcy Court. If an action is filed to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorney fees.

8. The Trustee and Hilltop understand and agree this settlement is the compromise of doubtful and disputed claims, and the agreements and payments set forth herein are not to be construed as admissions of liability by any party, which liability is expressly denied.

9. This Agreement constitutes the entire understanding between the Trustee and Hilltop and may not be changed, modified or altered, nor any of its provisions waived, except by an agreement in writing signed on behalf of the Trustee and Hilltop.

10. This Agreement may be executed in counterparts, and a facsimile signature shall be acceptable as an original for all purposes.

IN WITNESS WHEREOF, the Trustee and Hilltop have executed this Agreement as of the date first written above.

HILLTOP LANDSCAPE ARCHITECTS AND
CONTRATORS, a New Mexico corporation

Yvette J. Gonzales, Chapter 7 Trustee
P.O. Box 1037
Placitas, NM 87043

By: _____
Jim Forrester
Its: _____
Box 10630
Albuquerque, NM 87184
(505) 898-9690