

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the “Agreement”), is made this ___ day of April 2004 by and between Yvette J. Gonzales (the “Trustee”), acting in her capacity as the duly appointed Chapter 7 Trustee of the bankruptcy estate of Furr’s Supermarkets, Inc. (the “Furr’s Estate”) and Tree of Life, Inc. sometimes trading as Gourmet Award Foods (the “Defendant”).

WHEREAS, on February 8, 2001 (the “Petition Date”), Furr’s Supermarkets, Inc. (the “Debtor”) filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of New Mexico (the “Court”); on December 19, 2001, the Court entered an order converting the Chapter 11 case to a case under Chapter 7; and on December 19, 2001, the United States Trustee appointed Trustee as the Chapter 7 Trustee for the Furr’s Estate, in which capacity she continues to serve;

WHEREAS on or about August 13, 2002, Trustee filed a Complaint initiating Adversary Proceeding 02-1201 S (the “Adversary Proceeding”) against Defendant in which she sought to recover post-petition payments by Debtor to Defendant alleged to be in excess the amounts due (referred to in the action as the “Account Balance”);

WHEREAS the Defendant denies that it owes to Trustee any of the amounts alleged to be owed in the Adversary Proceeding;

WHEREAS the Trustee and the Defendant desire to settle the Adversary Proceeding and have agreed to execute this Agreement for such purpose;

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

1. Trustee will file a motion seeking approval of this settlement and will give notice of the motion with an opportunity to object as required by the Court.

2. No later than fifteen (15) days following entry of an order by the Court approving the Agreement, from which no timely appeal shall have been taken, the Defendant will pay the Trustee \$53,567.00 (the "Settlement Amount").

3. Following entry of an order approving this settlement and upon receipt of the Settlement Amount, Trustee will file a stipulation of dismissal of the Adversary Proceeding with prejudice.

4. The Trustee and Defendant hereby expressly agree and understand that nothing in this Agreement shall constitute any admission or acknowledgment of liability by either the Trustee or Defendant.

5. The Trustee and the Defendant shall each bear their respective costs and attorneys' fees incurred in the Adversary Proceeding, and in connection with settlement of the Adversary Proceeding.

6. The Trustee, on behalf of the Furr's Estate, for good and adequate consideration, hereby voluntarily and knowingly releases and forever discharges the Defendant, and all of the Defendant's agents, officers, directors, employees, attorneys, successors and assigns, from any and all claims, demands, actions, costs, expenses, and attorney fees that were or could have been part of the Adversary Proceeding; provided, however, that this Agreement does not waive or release (a) any claims arising in connection with this Agreement and (b) any claims the Trustee has in connection with the adversary proceeding captioned *Gonzales v. Tree of Life, Inc.*, Adv. No. 03-1095, United States Bankruptcy Court for the District of New Mexico.

7. The Defendant, on its behalf and on behalf of its affiliates, subsidiaries, and divisions, voluntarily and knowingly releases and forever discharges the Trustee, the Furr's Estate, and all of the Trustee's and/or the Furr's Estate's agents, officers, directors, employees, attorneys, successors and assigns, from any and all claims, demands, actions, costs, expenses, and attorney fees that were or could have been part of the Adversary Proceeding; provided, however, that this Agreement does not waive or release (a) any claims arising in connection with this Agreement, (b) any pre-petition claim asserted in any proof of claim filed in the Debtor's bankruptcy case (the "Preserved Claim"), and (c) any claims or defenses the Defendant has in connection with the adversary proceeding captioned *Gonzales v. Tree of Life, Inc.*, Adv. No. 03-1095, United States Bankruptcy Court for the District of New Mexico.

8. Defendant shall be allowed to amend the Preserved Claim to increase the general unsecured claim asserted therein by the Settlement Amount. The Trustee agrees that she shall not object to such amendment to the Preserved Claim and that the Settlement Amount shall be deemed an allowed general unsecured claim.

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

10. The Trustee and the Defendant 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 with respect to the Adversary Proceeding.

11. Trustee and Defendant warrant that each is the sole and current owner of the claims released by this Agreement and that each is respectively authorized to enter into this

Agreement. Each individual signing this Agreement on behalf of any party represents and warrants that he/she has full authority to do so.

12. This Agreement is entered into under the laws of the State of New Mexico and is subject to approval of the Court, after appropriate notice and an opportunity to object. The Court shall have exclusive jurisdiction to hear and determine any matter arising from this Agreement. If an action is filed to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorney fees.

13. If any part of this Agreement is held invalid, void or voidable against public policy or otherwise, the invalidity thereof shall not affect any other provisions, or parts hereof, which shall be given effect without the invalid provision or part.

14. No provision of this Agreement may be changed except by a written instrument executed by the Trustee and Defendant.

15. All of the terms and provisions of this Agreement shall be binding in all respects upon and inure to the benefit of the parties to the Agreement and their respective successors and assigns.

16. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same agreement. Signatures may be exchanged by telecopy. Each party agrees that it will be bound by its telecopied signature and that it accepts the telecopied signature of the other party.

17. This Agreement does not and is not intended to address any aspect of the adversary proceeding captioned *Gonzales v. Tree of Life, Inc.*, Adv. No. 03-1095, United States Bankruptcy Court for the District of New Mexico.

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

The Trustee

The Defendant

Tree of Life, Inc.

Yvette J. Gonzales, in her capacity as
the Chapter 7 Trustee of the Furr's
Supermarkets, Inc. bankruptcy estate

By: _____
Its: _____