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.,

No. 7-01-10770-SA

Debtor.

SUPPLEMENT TO MOTION TO APPROVE SETTLEMENT OF ADVERSARY PROCEEDING 03-1111-S (Hewlett-Packard Company)

Yvette Gonzales, the Chapter 7 Trustee, by and through counsel, for its Supplement to the Motion to Approve Settlement of Adversary Proceeding 03-1111-S (Hewlett-Packard Company), hereby STATES:

1. The Trustee filed her Motion to Approve Settlement of Adversary Proceeding 03-1111-S (Hewlett-Packard Company) on July 14, 2004.

2. The Motion makes reference to certain Settlement and Release Agreement. The Settlement and Release Agreement was inadvertently not filed with the original Motion. The Settlement and Release Agreement is attached hereto.

Respectfully submitted,

DAVIS & PIERCE, P.C.

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The undersigned hereby certifies that a true and accurate copy of the foregoing was mailed this 15th day of July, 2004.

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Cynthia M. Tessman, Esq.

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement"), made this ___ day of April 2004, by and between Yvette J. Gonzales (the "Plaintiff"), acting in her capacity as the duly appointed Chapter 7 Trustee of the Furr's Supermarkets, Inc. bankruptcy estate (the "Furr's Estate"), on the one hand, and Hewlett-Packard Company (the "Defendant"), on the other, is intended to extinguish the claims and obligations set forth below.

WHEREAS on or about February 6, 2003, the Plaintiff filed her Complaint to Avoid Preferential Transfers against the Defendant in the case captioned *Yvette J. Gonzales, Trustee v. Hewlett-Packard Company*, in the United States Bankruptcy Court for the District of New Mexico, Adv. Pro. No. 03-1111 S (the "Avoidance Action");

WHEREAS the on March 20, 2003, Defendant filed its Answer to Complaint to Avoid Preferential Transfers denying and raising certain affirmative defenses to the claims raised in the Avoidance Action by the Plaintiff;

WHEREAS on December 20, 2001, Defendant filed and is the holder of an administrative claim in *In re: Furr's Supermarkets, Inc.*, United States Bankruptcy Court for the District of New Mexico cause No. 7-01-10779 SA (the "Underlying Action");

WHEREAS the Plaintiff and the Defendant desire to settle all claims made or that could have been made as between them in the Avoidance Action or in the Underlying Action and have agreed to execute this Agreement for such purpose;

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

1. Upon Court approval of this Agreement, the Plaintiff will dismiss the Avoidance Action with prejudice.

2. Upon Court approval of this Agreement, the Defendant will withdraw its administrative claim in the Underlying Action in settlement of the Avoidance Action. In addition, the Defendant agrees that it will not oppose disallowance of all claims it may have in the Underlying Action.

3. The Plaintiff and the Defendant shall each bear their respective costs and attorneys' fees incurred in connection with the Avoidance Action.

4. Plaintiff and the Furr's Estate each do hereby, jointly and severally, **RELEASE** and **FOREVER DISCHARGE** Defendant and Defendant's predecessors, successors, assigns, officers, managers, directors, shareholders, employees, agents, attorneys, representatives, parent corporations, subsidiaries, and affiliates (hereinafter all of the above collectively referred to herein as "Defendant"), jointly and severally, from any and all claims, counterclaims, demands, damages, debts, suits, contracts, obligations, liabilities, accounts, offsets, rights, actions and causes of action of any nature whatsoever, including, without limitation, all claims, demands, and causes of action for contribution and indemnity, whether arising at law or in equity, whether presently possessed or possessed in the future, whether known or unknown, whether liability be direct or indirect, liquidated or unliquidated, whether presently accrued or to accrue hereafter, whether absolute or contingent, foreseen or unforeseen, and whether

or not heretofore asserted, for or because of or as a result of any act, omission, communication, transaction, occurrence, representation, promise, damage, breach of contract, fraud, violation of any statute or law, commission of any tort, or any other matter whatsoever or thing done, omitted or suffered to be done by the Defendant (insofar and only insofar as the same arise out of or relate to the Avoidance Action and/or the Underlying Action), which has occurred in whole or in part, or was initiated at any time from the beginning of time up to and immediately preceding the moment of execution of this Agreement; provided, however, that this Agreement does not waive or release any claims arising in connection with this Agreement.

5. The Defendant, on its behalf and on behalf of its affiliates, subsidiaries, and divisions, voluntarily and knowingly releases and forever discharges the Plaintiff, the Furr's Estate, and all of the Plaintiff'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 assertable or allowable under 11 U.S.C. § 503(b); provided, however, that this Agreement does not (i) waive or release any future claims or any claims arising in connection with this Agreement, (ii) prevent Defendant from filing a proof of claim asserting a pre-petition unsecured claim for the amounts paid in settlement of the Avoidance Action, or (iii) notwithstanding the foregoing, the term "claim" shall not include claims arising under or relating to provisions of the Lease and/or the Schedules that survive termination thereof by virtue of the express terms and conditions of the Lease and/or Schedules.

6. Waiver of Claims by the Parties. Each of the parties acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California, which provides as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Each of the parties waives and relinquishes any right or benefit it has or may have under Section 1542 of the Civil Code of the State of California or any similar provision under the statutory or nonstatutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits pertaining to the Released Matters.

In connection with such waiver and relinquishment, each of the parties acknowledges that it is aware that it or its attorneys, agents, consultants, employees or accountants may hereafter discover claims or facts in addition to or different from those which it now knows or believes to exist with respect to the subject matter of this Agreement, the Released Matters and the other parties hereto, but it is the intention of each party to fully, finally and forever settle and release all of the Released Matters, except as otherwise expressly provided herein. In furtherance of this intention, the releases herein given shall be and remain in effect as full and complete releases notwithstanding discovery or existence of any such addition or different claims or facts.

7. The Plaintiff and the Defendant 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.

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

9. The parties understand and agree this settlement is the compromise of doubtful and disputed claims, and the agreement and payments set forth herein are not to be construed as admission of liability by any party, which liability is expressly denied.

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

The Plaintiff

The Defendant

HEWLETT-PACKARD COMPANY

By: Charles N. Charnas

Title: Charles N. Charnas
Vice President,
Deputy General Counsel
and Assistant Secretary

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

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