

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

The parties to this Settlement Agreement and Mutual Release (hereinafter, “Agreement”) are Yvette J. Gonzales, Chapter 7 Trustee in In re: Furr’s Supermarkets, Inc., No. 7-01-10779 SA (the “Adversary Proceeding”), in the United States Bankruptcy Court for the District of New Mexico, for herself and on behalf of the Furr’s Supermarkets, Inc. bankruptcy estate, and its or each of their current or former general partners, limited partners, officers, directors, stockholders, employees, attorneys, agents, servants, successors and assigns, spouses, heirs, executors, administrators, attorneys, and any and all other related persons, entities, associations or corporations, whether or not herein named or referred to (collectively, hereinafter, “Trustee” or “Plaintiff”), and Pan American Fixture Company, d/b/a Custom Craft Fixtures, and its current or former general partners, limited partners, officers, directors, stockholders, employees, attorney, agents, servants, successors and assigns, spouses, heirs, executors, administrators, attorneys, and any and all other related persons, entities, associations or corporations, whether or not herein named or referred to (collectively, hereinafter, “Pan American,” or “Defendant”).

WHEREAS on or about February 7, 2003, the Plaintiff filed her Complaint to Avoid Preferential Transfers against the Defendant in the case captioned *Yvette J. Gonzales, Trustee v. Pan American Fixture Company, d/b/a Custom Craft Fixtures*, in the United States Bankruptcy Court for the District of New Mexico, Adv. Pro. No. 03-1079 S (the “Avoidance Action”).

WHEREAS the Plaintiff and the Defendant desire to settle the Avoidance Action and have agreed to execute this Settlement Agreement for such purpose and to extinguish the claims and obligations set forth below;

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

1. Payment. Pan American agrees to pay Trustee the sum of \$27,000.00 in full and final settlement of the Avoidance Action, and all claims which could have been brought therein.

Payments shall be due and payable on the following dates:

<u>Amount</u>	<u>Date</u>
\$3,000.00	The first day of the month immediately following the Date of the Entry of the Order Approving Settlement
\$3,000.00	The same day of each consecutive month thereafter until paid in full.

Interest shall not accrue on the payments to be made under this Agreement (except in the event of default, as set out below). Payments may be made without penalty in advance of their due dates. Payments shall be made to the Trustee at Yvette J. Gonzales, Chapter 7 Trustee, Post Office Box 1037, Placitas, NM 87043-1037.

Upon completion of the payments as set out above, the Trustee shall submit an Order Dismissing the Avoidance Action with Prejudice to the Bankruptcy Court, and the Trustee shall agree to timely execute and/or file any other documents and pleadings necessary to accomplish this dismissal, and deliver the unused judgment to counsel for Pan American Fixture Company, d/b/a Custom Craft Fixtures.

2. Security, Default, Notice And Opportunity To Cure. In order to secure payment of the amounts provided for in this Agreement, Pan American, through its attorney, shall approve a form of judgment that provides for judgment by the Trustee against Pan American in the amount of \$37,655.97, together with interest thereon at the federal statutory judgment rate from the date of entry of that judgment. This form of judgment shall be held by Trustee's attorney and shall not be submitted to nor entered of record by the bankruptcy court except upon the occurrence of an uncured payment default by Pan American in accordance herewith.

If Pan American fails to make any of the payments required by this Agreement by their

due dates, the Trustee may make written demand upon Pan American, with such notice to specify the default and the curative action required, at Pan American's address as follows:

Pan American Fixture Company
4914 Pan American Freeway NE
Albuquerque, NM 87109

with a copy to Gerald R. Velarde, Esq., Post Office Box 2226, Albuquerque, NM 87103-2226, or at such other address that Pan American may designate by a notarized statement delivered to the Trustee.

Notice in writing shall be given by certified mail, return receipt requested, addressed to Pan American at the effective address for Pan American as provided in this Agreement, with a copy to Pan American's attorney.

If Pan American fails or neglects to cure any default within Thirty (30) business days after the date Trustee's default notice is mailed, then the Trustee may submit the form of judgment held by Trustee's attorney to the bankruptcy court for entry. In such event, Trustee, upon entry of judgment, shall cause to be filed a Partial Satisfaction of Judgment in an amount equal to the sum of the payments paid prior to the default by Pan American. By way of example, if prior to default Pan American has paid the Trustee a total of \$3,000.00, then in that event the Trustee shall file a Partial Satisfaction of Judgment in that amount, with the result being that the amount remaining due on the judgment would be \$34,655.97 (\$37,655.97 minus \$3,000.00 paid), plus applicable statutory interest accrued on the judgment from the date of entry of the judgment.

If the final day for curing the default shall fall on a Saturday, Sunday, or Federal holiday, then the period for curing the default shall extend to the close of business on the next regular business day.

3. No Admission. It is understood and agreed that the release of Claims in this Agreement is the compromise of doubtful and disputed Claims, and that the payment and consideration given for the release of Claims should not be construed as an admission of liability on the part of any party to this Agreement. Each party denies liability to the others and intends merely to avoid litigation by buying their peace.

4. Release of Claims. The Trustee does hereby release and forever discharge Pan American, and Pan American does hereby release and forever discharge the Trustee, from any and all rights, claims, demands, damages, actions, causes of action and suits, of any kind or nature whatsoever, whether known or unknown, contingent or certain, developed or undeveloped, liquidated or unliquidated, now existing or hereafter arising (collectively, “Claims”), that each, individually or collectively, has now or might have in the future have against the other. The term “Claims” includes but is not limited to, those claims asserted or which could have been asserted by the Trustee or Pan American in United States Bankruptcy Court for the District of New Mexico Adversary Proceeding No. 03-1079-S, entitled, Yvette Gonzales, Trustee, Plaintiff, vs. Pan American Fixture Company, d/b/a Custom Craft Fixtures, Defendant, provided, however, that nothing contained herein shall operate to waive or release any claims arising in connection with this Agreement and its enforcement, including without limitation the payments set out in Paragraph 1. above, or the default provisions contained in Paragraph 2. above.

5. Trustee’s Representations. The Trustee states that she is the proper party to assert the causes of action referred to above and all claims made in the Adversary Proceeding or otherwise released under this Settlement Agreement; that she has not assigned, pledged or

otherwise transferred or encumbered any unasserted or asserted right, claim or cause or right of action against Pan American or any claim or cause of action that is released under this Settlement Agreement; that the person executing this Settlement Agreement for the Trustee has the authority to act on her behalf for the purpose of which she purports to act and to bind her to the terms and conditions herein, and that she is the proper party to execute this Settlement Agreement.

6. Pan American's Representations. Pan American states that the person executing this Settlement Agreement for it has the authority to act on its behalf for the purpose for which he/she purports to act and to bind it to the terms and conditions herein; and that it is the proper party to execute this Settlement Agreement.

7. Choice of Law. This Agreement is entered into under the laws of the State of New Mexico and the Federal Bankruptcy Code. 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.

8. Entire Agreement. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

9. Parties Bound. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, successors and assigns.

10. No Assignment. Each party to this Agreement acknowledges and represents that he, she, or it is the owner of the Claims released by this Agreement, and has not voluntarily or

