

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 Azar Nut Company, and its current or former general partners, limited partners, owners, affiliates, holding companies, subsidiaries, 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, “Azar Nut Company,” or “Defendant”).

WHEREAS on or about May 23, 2002, the Plaintiff filed her Complaint to Avoid Preferential Transfers against the Defendant in the case captioned *Yvette J. Gonzales, Trustee v. Azar Nut Company*, in the United States Bankruptcy Court for the District of New Mexico, Adv. Pro. No. 02-1112-S (the “Avoidance Action”), and thereafter the Plaintiff filed her Complaint to Avoid Post-Petition Transfers and for Turnover against the Defendant, Adv. Pro. No. 03-1124-S, which adversary proceeding were ultimately consolidated under number 02-1112-S (the “Avoidance Action”).

WHEREAS the Plaintiff and the Defendant desire to settle the Avoidance 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 Plaintiff and the Defendant as follows:

1. Payment. Azar Nut Company agrees to pay Trustee the sum of \$120,282.36 in full and final settlement of the Avoidance Action. Azar Nut Company shall pay the Trustee \$60,141.18 within 10 days of the entry of a Non-Appealable Order Approving Settlement of the Avoidance Action. Payment of the remaining balance of \$60,141.18 shall be due and payable six months after the date of the first payment. No interest shall accrue on the outstanding balance.

Payment may be made without penalty in advance of its due date. 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.

2. Security, Default, Notice And Opportunity To Cure. In order to secure payment of the amounts provided for in this Agreement, Azar Nut Company, through their attorney, shall approve a form of judgment that provides for judgment by the Trustee against Defendant in the amount of \$193,629.21, plus interest at the federal statutory judgment interest rate from the date of the entry of the 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 Azar Nut Company.

If Azar Nut Company fails to make any of the payments required by this Agreement by the respective due date, the Trustee may make written demand upon Azar Nut Company, with such notice to specify the default and the curative action required, at Azar Nut Company's address as follows:

Azar Nut Company
c/o James W. Brewer, Esq.
Kemp Smith
P.O. Box 2800
El Paso, Texas 79999-2800

or at such other address as the Defendant may designate from time to time, in writing, to the attorneys for the Trustee. Such Notice of Default, in writing, shall be given by certified mail, return receipt requested, addressed to Azar Nut Company at the above address.

If Azar Nut Company fails or neglects to cure any default within Fourteen (14) 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 payments paid prior to the default by Azar Nut Company. By way of example, if prior to default Azar Nut Company has paid the Trustee a total of \$60,141.18, 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 \$133,488.03 (\$193,629.21 minus \$60,141.18 paid).

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 Azar Nut Company, and Azar Nut Company 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 Azar Nut Company in the Avoidance Action, 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 Azar Nut Company 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. Azar Nut Company's Representations. Azar Nut Company states that they have the authority to act for the purpose for which they purport to act and to bind themselves to the terms and conditions herein; and that they are the proper party to execute this Settlement Agreement.

7. Allowed Claim. Upon payment in full pursuant to Paragraph 1, Azar Nut Company shall have an allowed general unsecured claim in the Furr's Supermarkets, Inc. case in the amount of \$120,282.36.

8. Choice of Law. 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. 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.

10. Parties Bound. This Agreement shall be binding upon, and shall inure to the benefit

