

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered on this ____ day of April, 2011 (the "Effective Date") solely by and between the Township of West Orange ("Township"), a municipal corporation of the State of New Jersey, and Apex Fire Protection, Inc. ("Apex"), a fire sprinkler subcontractor (collectively, the "Parties"). No other parties, except the foregoing named entities, shall be deemed subject to the terms of this Agreement.

RECITALS

WHEREAS, on August 29, 2010, a fire was reported inside the Dollar Tree store located within the West Orange Plaza shopping mall, 235 Prospect Avenue, West Orange, New Jersey, 07052 (the "Property");

WHEREAS, Township Fire Department and Police Department personnel were called to the Property in response to the fire; and

WHEREAS, subsequent to the fire, Township fire officials reviewed and inspected the fire safety equipment within and around the Dollar Tree; and

WHEREAS, the Dollar Tree store and twelve (12) other stores within the Property are linked to one main fire protection system through, among other things, a series of standpipes and risers within the K-Mart store; and

WHEREAS, Apex is the entity charged with overseeing the sprinkler system within the K-Mart store; and

WHEREAS, upon the Township fire officials' inspection of the Property subsequent to the fire, and review of fire inspection reports previously submitted to the Township by Apex in or about December, 2009, the Township Fire Department issued thirteen (13) Notices of Violation and Orders to Pay Penalty to Apex, six (6) notices having been received by Apex on or about September 15, 2010, and an additional seven (7) notices having been received by Apex on or about September 27, 2010; and

WHEREAS, the Township cited Apex for violations of the New Jersey Uniform Fire

Code, specifically N.J.A.C. 5:70-2.12(b)9(i) for the filing with the Township of false statements of its prior inspections, and N.J.A.C. 5:70-3.907.15 for failure to properly maintain the fire safety system within and around the Dollar Tree store and adjacent properties; and

WHEREAS, Apex appealed the thirteen (13) Notices of Violation and Orders to Pay Penalty to the Township's Construction Board of Appeals, by way of appeals dated September 30, 2010 and October 12, 2010; and

NOW, THEREFORE, in consideration of the mutual benefits conferred in this Settlement Agreement, the premises of this Agreement, the consideration provided for herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions herein contained, the Parties agree as follows:

1. **Mutual Release.** The Parties have agreed to fully and finally compromise and settle, for good and valuable consideration, the controversies and disputes between them as asserted or which could have been asserted directly or indirectly solely in connection with the thirteen (13) Notices of Violation and Orders to Pay Penalty, currently pending before the Township's Construction Board of Appeals. In exchange for the Parties' dismissal of all currently pending claims, all claims that could have been brought to date, and/or future claims arising out of the August 29, 2010 fire, which accrued prior to the date of this Agreement, and the consideration provided for under this Agreement, the Parties agree to mutually release and give up any and all claims and rights which they have or may have against each other, whether known or unknown.

(a) The Parties hereby knowingly and voluntarily release and forever discharge the other Party, for itself, successors, and assigns and each of its officers, directors, managers, members, shareholders, subsidiaries and affiliates, and hereby further release, remise and forever discharge the other Party and its respective predecessors, successors, assigns, managers, shareholders, representatives, parent corporations, subsidiaries,

affiliates, agents, servants, employees, attorneys, consultants, officers, directors, each in their corporate and individual capacities, from any and all claims or causes of action, counterclaims and cross-claims arising out of or in any way related to the Notices of Violation and Orders to Pay Penalty as set forth in this Agreement.

(b) This Agreement specifically and generally includes any and all claims, violations, counterclaims, cross-claims, causes of action, suits, debts, sums of money, accounts, reckonings, covenants, contracts, controversies, affirmative defenses, agreements, promises, rights, variances, trespasses, damages, judgments, executions, claims, demands, and liabilities of any kind (upon any legal or equitable theory, whether contractual, common law, statutory, federal, state, local or otherwise, and including, but not limited to, any claims for attorneys' fees, costs and disbursements of any kind), whether known or unknown whatsoever, that each of the Parties ever had, now have, or hereafter can, shall, or may claim to have against the other Party solely in connection with the August 29, 2010 fire at the Property.

(c) Without limiting the generality of the foregoing set forth above, the Parties and each of their officers, directors, managers, members, shareholders, subsidiaries and affiliates, hereby further releases, remises and forever discharges the other Party and its respective predecessors, successors, assigns, managers, shareholders, representatives, parent corporations, subsidiaries, affiliates, agents, servants, employees, attorneys, consultants, officers, directors, each in their corporate and individual capacities, from any and all claims or causes of action arising out of or in any way related to the Notices of Violation and Orders to Pay Penalty issued to Apex by the Township solely in connection with the August 29, 2010 fire at the Property.

(d) No other parties, except Apex and the Township, shall be deemed subject to the terms of this Agreement. This Agreement shall be deemed to apply only to Apex and the Notices of Violation and Orders to Pay Penalty issued to it. This Agreement shall not operate

so as to release any other party, entity or individual which has previously or may in the future receive Notices of Violation and Orders to Pay Penalty in connection with and arising out of the August 29, 2010 fire at the Property, or otherwise.

(e) This Agreement expressly includes any and all past and present claims arising from the beginning of time to the date hereof by either Party against the other Party, solely in connection with and arising out of the August 29, 2010 fire at the Property, about which the other Party does not know or suspect to exist in its favor, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect the Parties' decision to enter into this Agreement.

2. Dismissal of Appeals and Covenant Not to Sue.

(a) With this Agreement, Apex agrees to waive and withdraw its appeals of the Notices of Violation and Orders to Pay Penalty to the Township Construction Board of Appeals, with prejudice and without costs.

(b) With the sole exception of a suit arising out of the terms of the Consent Judgment, as defined in Paragraph 10(c) below, the Parties further represent and agree that they shall not file any lawsuits against the other, and their respective predecessors, successors, assigns, managers, shareholders, representatives, parent corporations, subsidiaries, affiliates, agents, servants, employees, attorneys, consultants, officers, directors, each in their corporate and individual capacities, in any court or administrative tribunal, or file or cause to be filed any charges or complaints against the Parties with any municipal, state or federal agency charged with the enforcement of any law or regulation based on the Notices of Violation and Orders to Pay Penalty. The Parties agree that they will not sue or file a charge, complaint, grievance or demand for arbitration against the other Party and their respective predecessors, successors, assigns, managers, shareholders, representatives, parent corporations, subsidiaries, affiliates, agents, servants, employees, attorneys, consultants, officers, directors, each in their corporate and individual capacities, in

any forum or assist or otherwise participate willingly or voluntarily in any claim, arbitration, suit, action, investigation or other proceeding of any kind which relates to any matter that involves any relationship between the Township and Apex, and that occurred up to and including the date of this Agreement, unless required to enforce this Agreement.

3. **Confidentiality.** For and in consideration of the Agreement being executed, and, in furtherance of the settlement of the Notices of Violation and Orders to Pay Penalty, the Parties agree: (i) that neither the Township nor Apex, nor either Party's agents, will disclose the terms, conditions, or existence of this Agreement to any person or entity except to the Parties' attorneys or financial advisors or if required in response to a subpoena or order from a court of law or administrative agency or tribunal, or as required under State law or administrative regulation, including but not limited to any requirement that the within Agreement and its terms are approved by any governmental entity including the Township Council of the Township of West Orange or subject to the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.; and (ii) that neither the Parties' nor their agents will disparage the other Party or any of the other Party's respective heirs, executors, administrators, successors and assigns. The Parties further agree that the Parties will advise any individual to whom the terms, conditions or existence of this Agreement have been disclosed by the other Party, of the confidentiality requirements of this Paragraph 3 and that such persons shall not disclose any such information to any person.

4. **Denial of Liability.** The consideration provided, or to be provided, hereunder, is not an admission of liability of any violation of any state, local or federal law by the Parties, but instead is made to avoid the burden, expense, delay and uncertainties of the appeals process with respect to the Township's Construction Board of Appeals. Apex acknowledges the applicability of the New Jersey Uniform Fire Safety Act and the New Jersey Uniform Fire Code with respect to this matter, but disclaims and denies liability in connection with the August 29, 2010 fire and events preceding that incident. Each Party does not purport to be

the prevailing party in any threatened or pending proceeding, administrative or otherwise. Each Party acknowledges and agrees that all allegations remain disputed, inconclusive and denied. Nothing contained herein may be used or viewed as an admission of wrongdoing or liability.

5. **Severability.** Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal or invalid, the validity of the remaining parts, terms or provisions shall be affected thereby, and said illegal or invalid part, term, or provision shall be deemed not to be part of this Agreement.

6. **Integration Clause.** This Agreement constitutes the complete agreement and understanding between the Parties regarding the Notices of Violation and Orders to Pay Penalty, and appeals thereof, and may be amended only in a writing signed by the Parties. The Parties acknowledge that no representative of the Parties has made any representation or promise concerning the terms or conditions of this Agreement, other than those expressly set forth in this Agreement.

7. **Authority.** The Parties expressly represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Agreement; and that each Party has the sole right and exclusive authority to sign this Agreement, however, the Township shall be authorized to fully execute this Agreement only upon the consideration and approval of the Agreement by the Township Council; the Parties further represent that each Party has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims referred to in this Agreement.

8. **Cooperation; Further Assurances.** The Parties agree to cooperate fully and sign any and all supplementary documents and take all additional actions necessary to give full force and effect to the terms of this Agreement

9. **Binding Effect.** The Parties and their respective agents are bound by this Agreement. Anyone who succeeds to the Parties' rights and responsibilities are also bound.

This Agreement is made for the Parties' mutual benefit and all who succeed to the Parties' rights and responsibilities.

10. **Terms and Consideration.**

(a) *Amount of Payments.* For the release of the Notices of Violation and Orders to Pay Penalty, Apex agrees to and shall pay to the Township a total of fifty-thousand dollars (\$50,000), which sum is inclusive of an initial payment of \$15,000, by certified check, wire, attorney trust account check, money order, and/or official bank check, in accordance with the following schedule:

<u>DATE DUE</u>	<u>PAYMENT AMOUNT</u>
May 2, 2011	\$15,000
June 1, 2011	\$3,000
July 1, 2011	\$3,000
August 1, 2011	\$3,000
September 1, 2011	\$3,000
October 3, 2011	\$3,000
November 1, 2011	\$3,000
December 1, 2011	\$3,000
January 2, 2012	\$3,000
February 1, 2012	\$3,000
March 1, 2012	\$3,000
April 2, 2012	\$3,000
May 1, 2012	\$2,000

(b) *Timing and Delivery of Payments.* In accordance with the foregoing schedule, payments shall be due on the first day of each month, or the first business day of each month when the first day shall fall on a weekend or federal holiday. A ten-day grace period with respect to the due dates previously set forth shall be permitted, however, in accordance with the Consent Judgment set forth below in Subsection (c) of this Section, in no event shall Apex make a payment after the expiration of the ten-day grace period, TIME BEING OF THE ESSENCE. All payments must be received by the above dates, and delivered to Township of West Orange, c/o Aziz O. Nekoukar, Esq., Trenk, DiPasquale, Webster, Della Fera & Sodono, P.C., 347 Mount Pleasant Avenue, Suite 300, West Orange, New Jersey 07052.

(c) *Consent Judgment.* Simultaneously with the execution of this Agreement, the

Parties shall also execute a Consent Judgment. During the time payments continue to be owed in accordance with the schedule set forth in Subsection (a) of this Section, the Consent Judgment shall be held in escrow by Trenk, DiPasquale, Webster, Della Fera & Sodono, P.C., Attorneys for the Township. The Consent Judgment shall provide for an amount due from Apex of one hundred thousand dollars (\$100,000), plus any outstanding amount which remains due and owing under this Agreement at the time of the default, plus post-judgment interest at the rate of five-percent (5%) per annum, plus all attorneys' fees and costs necessary to obtain and collect the Consent Judgment. Should Apex default under this Agreement or fail to make any payment in a timely manner in accordance with the provisions of this Agreement, on the next business day after such default or failure to pay, the Township shall be authorized to immediately file the Consent Judgment on written notice to Apex's counsel. Apex agrees that it will not challenge or oppose entry of the Consent Judgment based on jurisdiction or otherwise, and that Apex will be deemed to have waived any and all defenses to the Consent Judgment.

12. **Signatures.** The Parties confirm that they understand and agree to the terms of this Agreement. By signing this Agreement, the Parties acknowledge that they have carefully read it, understand it, and are aware that they are giving up rights with respect to the matters described herein. By signing this Agreement, the Parties acknowledge that they have been provided sufficient opportunity to consult with legal counsel of their own choosing regarding the terms of the Agreement and regarding the rights that they are relinquishing thereunder. The Parties sign this Agreement freely, voluntarily, and with knowledge of the terms and the rights they are relinquishing. This Agreement may be executed in counterparts and electronic or facsimile signatures of this Agreement shall have the same force and effect as the original thereof.

IN WITNESS WHEREOF, this Agreement has been duly executed by or on behalf of each of the Parties, to be effective as of the Effective Date.

APEX FIRE PROTECTION, INC.

Witness

By: _____
Michael Stossel, President

TOWNSHIP OF WEST ORANGE

Witness

By: _____
Honorable Robert Parisi,
Mayor