

**Mayor and Council
89th Special Session
May 5, 2016
Agenda**

*"A diverse, business-friendly, and sustainable community with clean, safe and strong neighborhoods."
"Providing the most efficient and highest-quality services as the municipal location of choice for all
customers."*

4:30 PM SPECIAL SESSION

- 4:30 PM** 1. Approval of a Resolution: Settlement Agreement and Mutual Release Between the City of Hagerstown and Sussex Insurance Company, Partners Marketing, LLC, Keith Feully, EC Commodities, Corp., and Thomas Petrizzo

CITY ADMINISTRATOR'S COMMENTS

MAYOR AND COUNCIL COMMENTS

ADJOURN

**REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

Topic:

Approval of a Resolution: Settlement Agreement and Mutual Release Between the City of Hagerstown and Sussex Insurance Company, Partners Marketing, LLC, Keith Feuilly, EC Commodities, Corp., and Thomas Petrizzo

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:

File Name

Approval_of_a_Resolution_-_Settlement_Agreement_and_Mutual_Release.pdf

Description

Resolution - Settlement Agreement and Mutual Release

REQUIRED MOTION

**MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND**

DATE: May 5, 2016

TOPIC: APPROVAL OF A RESOLUTION FOR A SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN THE CITY OF HAGERSTOWN AND SUSSEX INSURANCE COMPANY, PARTNERS MARKETING, LLP, KEITH FEUILLY, EC COMMODITIES, CORP., AND THOMAS PETRIZZO

Charter Amendment	<input type="checkbox"/>
Code Amendment	<input type="checkbox"/>
Ordinance	<input type="checkbox"/>
Resolution	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>

MOTION: I hereby move that the Mayor and City Council approve the attached Resolution Authorizing the Execution of a Settlement Agreement and Mutual Release between the City of Hagerstown and Sussex Insurance Company, Partners Marketing, LLP, Keith Feiully, EC Commodities Corp., and Thomas Petrizzo, Settling and Resolving the Litigation and Providing for the Abatement of the Property Conditions Related to the Former Municipal Electric Light Plant.

DATE OF INTRODUCTION: 5/05/16
DATE OF PASSAGE: 5/05/16
EFFECTIVE DATE: 5/05/16

CITY OF HAGERSTOWN, MARYLAND

A RESOLUTION AUTHORIZING THE EXECUTION OF A SETTLEMENT AGREEMENT AND MUTUAL RELEASE BETWEEN THE CITY OF HAGERSTOWN AND SUSSEX INSURANCE COMPANY, PARTNERS MARKETING, LLP, KEITH FEUILLY, EC COMMODITIES, CORP., AND THOMAS PETRIZZO, SETTLING AND RESOLVING THE LITIGATION AND PROVIDING FOR ABATEMENT OF THE PROPERTY CONDITIONS RELATED TO THE FORMER MUNICIPAL ELECTRIC LIGHT PLANT

RECITALS

WHEREAS, the City of Hagerstown, Maryland is a Municipal Corporation existing under and by virtue of the laws of the State of Maryland; and

WHEREAS, Partners Marketing, LLP is the owner of a parcel of property located in Hagerstown, Washington County, Maryland by virtue of a Deed dated June 13, 1996 and recorded in the Washington County Land Records at Liber 1278, folio 787 (the "Property"), which contains a dilapidated, vacant and partially demolished building known as the former Municipal Electric Light Plant (the "MELP Building"); and

WHEREAS, on May 21, 2014, the City filed a Complaint for Condemnation of the Property in the Circuit Court for Washington County, Maryland (the "Condemnation Litigation"); and

WHEREAS, the City and Partners subsequently entered into a Release and Settlement Agreement, whereby Partners agreed, among other things, to demolish the MELP Building, and to provide a surety bond in the amount of \$850,000 for the demolition and related work; and

WHEREAS, on October 9, 2014 Sussex Insurance Company executed and issued a Performance/Surety Bond in the above referenced amount naming the City as obligee; and

WHEREAS, in May, 2015 Sussex Insurance Company purported to cancel the aforementioned Bond; and

WHEREAS, on June 29, 2015, the City filed a complaint for Declaratory Judgment against Sussex Insurance Company objecting to the purported cancellation of the Bond (the "Declaratory Judgment Litigation"); and

WHEREAS, Partners Marketing, LLP defaulted under the Release and Settlement Agreement by, among other things failing to complete the demolition of the MELP Building; and

WHEREAS, the MELP Building remains in a dangerous, partially demolished condition in violation of the Property Maintenance Code of the City; and

WHEREAS, the parties have negotiated a Settlement Agreement and Mutual Release which resolves the Declaratory Judgment Litigation, provides for the ultimate resolution of the Condemnation Litigation, and provides for the abatement of the dangerous condition of the MELP Building; and

WHEREAS, the Mayor and Council have determined that it is in the best interests of the City to enter into the Settlement Agreement and Mutual Release;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. That the pending legal disputes between the City and the above referenced parties be and are hereby resolved and settled pursuant to the terms of the Settlement Agreement and Mutual Release between the City and Sussex Insurance Company, Partners Marketing, LLP, Keith Feuilly, EC Commodities, Corp., and Thomas Petrizzo (the "Agreement"), a copy of which is attached hereto and incorporated herein by reference.
2. That the Mayor be and is hereby authorized to execute and deliver the Settlement Agreement and Mutual Release and to act as signatory on behalf of the City on any documentation necessary to effectuate the purpose of this Resolution and implement the terms of the Agreement.

BE IT FURTHER RESOLVED THAT this Resolution shall become effective immediately upon its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Donna Spickler, City Clerk

David S. Gysberts, Mayor

Date of Introduction: May 5, 2016
Date of Passage: May 5, 2016
Effective Date: May 5, 2016

PREPARED BY:
SALVATORE & BOYER
CITY ATTORNEY

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is entered into this ____th day of _____, 2016, by and between The City of Hagerstown (the "City"), Sussex Insurance Company, for itself and as successor to Companion Property and Casualty Insurance Company ("Sussex"), Partners Marketing, LLP ("Partners") and Keith Feuilly ("Feuilly"), EC Commodities, Corp., and Thomas Petrizzo ("Petrizzo") (collectively, the "Parties").

RECITALS

WHEREAS, on June 13, 1996, Hagerstown Fiber & Light Limited Partnership conveyed a parcel of property in Washington County, Maryland, to Partners. This property is further described in a Deed dated June 13, 1996, and recorded in the Washington County Land Records at Liber 01278, folio 00787 (the "Property"). The Property contains a dilapidated, vacant and partially demolished building known as the former Municipal Electric Light Plant Building (the "MELP Building"). Partners continues to own the Property; and

WHEREAS, on May 21, 2014, the City filed, in Washington County Circuit Court, a Complaint for Condemnation (Eminent Domain) of the Property described in the aforementioned Deed (Case No. 21C14050621) (the Condemnation Litigation); and

WHEREAS, the City and Partners subsequently entered into a Release and Settlement Agreement (the "Contract" or "Settlement Agreement"), wherein Partners agreed, among other things, to demolish the MELP building, complete a series of other demolition, asbestos abatement, PCB decontamination, and site work projects on the MELP Building or adjacent thereto, secure and provide proof of the issuance of a surety bond in the amount of \$850,000.00, and, upon completion of the demolition and other related work, tender clean title and possession

of the Property to the City no later than July 1, 2015 (the "MELP Project"). A copy of the Settlement Agreement is attached hereto as Exhibit A; and

WHEREAS, Keith Feuilly and Thomas Petrizzo are/were member of Partners; and

WHEREAS, on October 9, 2014, Sussex executed and issued Performance/Surety Bond Number DSG0001168 in the Penal Sum of Eight Hundred and Fifty Thousand and 00/100 Dollars (\$850,000.00) (the "Bond"). The principal under the Bond is Partners, and the obligee is the City. The Bond is attached hereto and incorporated herein as Exhibit B; and

WHEREAS, a dispute arose between Partners and the City relating to Partners' performance of the Contract; and

WHEREAS, Sussex, in May 2015, sent the City a purported Cancellation Notice with respect to the Bond; and

WHEREAS, on June 29, 2015, the City filed a Declaratory Judgment Complaint against Sussex and other related parties. The Complaint, *The City of Hagerstown v. Sussex Insurance Company d/b/a Companion Property and Casualty Insurance Company, et al.* (Case No. 21-C-15-54365 -CN) is still pending in the Circuit Court for Washington County (the "Declaratory Judgment Litigation"); and

WHEREAS, on October 16, 2015, the City sent a Notice of Default to Partners under the Contract, providing Partners with thirty (30) days to cure its default. Partners did not cure its default within thirty (30) days of the October 16, 2015 Notice of Default, nor did Partners complete the MELP Project or close in accordance with the Settlement Agreement at any point thereafter; and

WHEREAS, on October 16, 2015, as a result of the dangerous condition in existence due to the partially demolished MELP Building, the City's Code Administration Division issued a

Notice of Violation to Partners, advising Partners that, in general, the Property was in violation of the City's Property Maintenance because structures on the Property were unsafe, unfit for human occupancy, unlawful, and/or so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy. The Notice of Violation directed compliance with a demolition order and inspection by November 16, 2015; and

WHEREAS, Partners appealed the Notice of Violation to the City's Board of Code Appeals. On November 24, 2015, the Board of Code Appeals affirmed the finding of the Code Official, finding in favor of the City. Thereafter, the City continued to take necessary action to fence and contain the Property in order to protect the community from the dangerous, unsafe, and unsanitary conditions; and

WHEREAS, the MELP Building remains in a dangerous, partially demolished condition; and

WHEREAS, the City and Sussex, for itself and pursuant to a Power of Attorney executed by Partners and Feuilly, have engaged in good faith discussions in an effort to resolve their disputes arising from any acts or omissions that may have occurred up until and including the date of this Agreement and relating to the Property, the MELP Project, the Contract, and/or the Bond, including but not limited to the claims asserted by the City in the Condemnation Litigation and the Declaratory Judgment Litigation, and the Parties now memorialize the agreement they have reached as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the covenants contained herein, and other good and sufficient consideration, the receipt of which is hereby acknowledged, and the foregoing Recitals, the Parties agree to the following terms of settlement in full and final satisfaction of any

and all claims or potential claims by and between or among the Parties arising from any acts or omissions that may have occurred up until and including the date of this Agreement and relating to the Property, the MELP Project, the Contract, and/or the Bond, including but not limited to the claims asserted by the City in the Condemnation Litigation and the Declaratory Judgment Litigation, so as to avoid the expense and inconvenience of litigation, and without the admission of liability by any of the Parties whatsoever:

1. **INCORPORATION OF RECITALS.** The above Recitals are hereby affirmed and incorporated herein as if fully set forth.

2. **EFFECTIVE DATE OF THIS AGREEMENT.** This Agreement is effective as of the date it is fully executed by the Parties.

3. **WARRANTIES.**

3.1 The Parties warrant and represent that they and/or their representatives pursuant to a Power of Attorney have been fully informed and have full knowledge of the terms, conditions and effects of this Agreement.

3.2 The Parties warrant and represent that they have, personally or through their attorney and/or representative pursuant to a Power of Attorney, fully investigated, to such Party's full satisfaction, all facts surrounding the various claims, controversies and disputes and are fully satisfied with the terms and effects of this Agreement.

3.3 The Parties warrant and represent that no promise, representation or inducement has been offered or made except as set forth herein, and that this Agreement is executed without reliance upon any statement or representation by any other Party or its (his) agent.

3.4 The Parties warrant and represent that, to the best of their knowledge, no other person or entity has any interest in any of the claims referred to in this Agreement and that they

have not sold, assigned, transferred, conveyed or otherwise disposed of any claims, judgments, demands, obligations, or causes of action referred to in this Agreement and that each of the Parties' representatives has legal capacity to execute this Agreement in all respects.

3.5 The Parties warrant and represent that this Agreement constitutes a legal, valid and binding obligation of the Parties, enforceable against each of them in accordance with its terms.

4. ENTIRE AGREEMENT. This Agreement supersedes and replaces all prior agreements between the Parties.

5. NO ADMISSION OF LIABILITY. By executing this document, the Parties acknowledge and agree that the execution, delivery and acceptance of this Agreement is not an admission, waiver, acknowledgement, nor evidence of any liability whatsoever by any individual or entity. Neither this Agreement nor the terms hereof, nor any negotiations or proceedings connected herewith, shall be offered or received in evidence in any form for any purpose other than for the purpose of the effectuation of or enforcement of this Agreement, and, without limitation, shall not be used in any proceeding as an admission of liability or wrongdoing whatsoever by the Parties, or as an admission that any party suffered any injury, or as an admission of any of the averments of the pleadings. However, Sussex may use this Agreement as evidence in connection with any litigation involving any of its indemnitors and it may also utilize this Agreement for purposes of reinsurance, if any.

6. MUTUAL RELEASE.

6.1 In consideration of the covenants contained herein, the receipt of the Settlement Payment outlined in Paragraph 7 below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City, for itself and its agents, attorneys,

representatives, successors and assigns, hereby forever releases and discharges Sussex, Partners , Feuilly, EC Commodities, Corp., and Petrizzo, and their respective agents, attorneys, representatives, personal representatives, heirs and devisees, and successors and assigns (the "First Released Parties"), from any claim, demand, right or cause of action, whether presently known or unknown, suspected or unsuspected, disclosed or undisclosed, matured, unmatured, liquidated or contingent, of whatever nature or kind in law, equity, administrative proceedings or otherwise, which the City had, has or may have against the First Released Parties arising from any acts or omissions that may have occurred up until and including the date of this Agreement, and relating in any way to the Property, the MELP Project, the Contract, and/or the Bond, including but not limited to the claims asserted by the City in the Condemnation Litigation and the Declaratory Judgment Litigation.

6.2 In consideration of the covenants contained herein, the City's receipt of the Settlement Payment provided for in Paragraph 7 below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sussex, Partners , Feuilly, EC Commodities, Corp., and Petrizzo, for themselves and their respective agents, attorneys, representatives, personal representatives, heirs and devisees, and successors and assigns, hereby forever release and discharge the City, and its agents, attorneys, representatives, successors and assigns, (the "Second Released Parties"), from any claim, demand, right or cause of action, whether presently known or unknown, suspected or unsuspected, disclosed or undisclosed, matured, unmatured, liquidated or contingent, of whatever nature or kind, in law, equity, administrative proceedings or otherwise, which Sussex, Partners, Feuilly, EC Commodities, and Petrizzo, and their respective agents, attorneys, representatives, personal representatives, heirs and devisees, and successors and assigns had, has or may have against the

Second Released Parties arising from any acts or omissions that may have occurred up until and including the date of this Agreement and relating in any way to the Property, the MELP Project, the Contract, and/or the Bond.

6.3 COVENANT NOT TO SUE. In consideration of the covenants contained herein, the City's agreement to accept and the receipt of the payment provided for in Paragraph 7 below and for other good and valuable consideration, the Parties identified as the First Released Parties in Paragraph 6.1 above, should any dispute or controversy arise or exist between or among them, hereby agree and covenant not to sue or pursue any claims (in Court or before an administrative body), or make any demands, seek any relief, or file any lawsuit (or any claims, counterclaims or third-party claims therein) against the City and any other persons or entities identified as the Second Released Parties hereinabove in Paragraph 6.2. In the event that one or more of the First Released Parties files a lawsuit, pursues any claim (in Court or before an administrative body), makes any demands, seeks any relief, or files any counterclaims or third-party claims against the City and any other persons or entities identified as the Second Released Parties hereinabove in Paragraph 6.2, and one or more of the First Released Parties asserts that the Power of Attorney relied upon by Sussex in executing this Agreement on behalf of Partners and Feuilly is invalid for any reason whatsoever, Sussex agrees to defend and indemnify the City in any such action from any and all damages, claims, costs, expenses, including but not limited to reasonable attorney's fees, suffered, incurred or expended in any such proceedings. Further, to the extent that the City files suit to enforce the terms of this Agreement and any of the persons or entities identified as the First Released Parties hereinabove in Paragraph 6.2 asserts as a defense that the Power of Attorney relied upon by Sussex in executing this Agreement on behalf of Partners and Feuilly is invalid for any reason whatsoever, Sussex agrees to indemnify the City

from any and all costs and expenses incurred in any such enforcement proceeding, including but not limited to reasonable attorney's fees. This covenant not to sue is intended to be interpreted as broadly as possible so as to protect the City and the other parties identified as the Second Released Parties in Paragraph 6.2 of and from any and all continued claims or exposure with respect to the Property, the MELP Building, the MELP Project, the Contract or otherwise.

7. **PAYMENT.** In consideration of the covenants contained herein, the release, and other consideration recited herein, the Parties agree that Sussex, within eleven (11) business days of the execution hereof, shall pay or cause to be paid to the City the total amount of Five Hundred Thousand Dollars (\$500,000.00) (the "Settlement Payment"). Sussex shall make the Settlement Payment payable to "The City of Hagerstown" and shall deliver the Settlement Payment to the attention of Paul D. Rose, Jr., Miles & Stockbridge, PC, 30 West Patrick Street, 5th Floor, Frederick, Maryland 21701. The Settlement Payment must be paid and received within eleven (11) business days of execution hereof.

8. **DISMISSAL OF THE DECLARATORY JUDGMENT LITIGATION.** Promptly upon the full execution of this Agreement and the receipt of the Settlement Payment, the Parties, through their counsel, shall execute and file a Stipulation of Dismissal With Prejudice of all claims asserted in the Declaratory Judgment Litigation. The City shall pay the \$15.00 cost associated with filing the Stipulation of Dismissal With Prejudice.

9. **COOPERATION BY THE FIRST RELEASED PARTIES WITH RESPECT TO THE CITY'S DEMOLITION OF THE MELP BUILDING.**

Upon the full execution of this Agreement, and pursuant to its police powers as a Maryland municipal corporation, the City shall complete the demolition of the MELP Building as necessary to abate the dangerous condition and bring the Property into compliance with the Property Maintenance Code. Keith Feully and Partners Marketing, pursuant to the Power of

Attorney as well as pursuant to an email from Keith Feuilly, agree to cooperate with regard to the City's demolition of the MELP Building, to provide the City, its agents and contractors full access to the Property during the demolition process, and not to object in any way (including any appeal or other litigation) to the City's demolition of the MELP Building. All contractors retained by the City shall name the City and Partners as additional insureds on their insurance coverage. The demolition work to be performed by or on behalf of the City shall be limited to bringing the property into compliance with the City Property Maintenance Code and eliminating the dangerous, partially demolished condition of the MELP Building, the extent and conduct of which shall be within the sole and absolute discretion of the City. The City makes no representations or warranties about the work to be performed or the condition of the Property upon completion thereof.

10. TERMINATION OF THE CONTRACT AND DISMISSAL OF CONDEMNATION LITIGATION.

Upon the completion of the demolition of the MELP Building, the City shall terminate the Contract between the City and Partners and the City will dismiss its existing Complaint for Condemnation against Partners (Case No. 21C14050621) by filing a Notice of Dismissal.

11. MODIFICATION. This Agreement constitutes the entire understanding between the Parties with respect to the matters asserted, or which could have been asserted, in the Litigation and any promises, representations or warranties not herein contained shall have no force and effect. No supplement, modification or amendment to this Agreement shall be binding or effective unless executed in writing and signed by the Parties.

12. APPLICABLE LAW. This Agreement shall be delivered in the State of Maryland and shall be governed, construed and interpreted in all respects in accordance with the laws of the State of Maryland. The parties hereby agree that should any legal proceeding be initiated

hereunder, following the dispute resolution process provided for in Paragraph 15 below, any such proceeding shall be brought and the parties shall be subject to the jurisdiction of the Circuit Court for Washington County, Maryland.

13. **BENEFIT AND BURDEN.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties hereto and each of their heirs, devisees and personal representatives and/or their successors and assigns as the case may be.

14. **SEVERABILITY.** In the event that any provision or any portion of any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision or portion thereof, unless the absence of that provision or portion thereof materially alters the rights and obligations of the Parties hereto.

15. **DISPUTE RESOLUTION.** Should any dispute or controversy arise hereunder, the Parties agree to provide written notice thereof to all affected parties and further agree to seek to resolve any such dispute first by informal discussion and negotiation and, should such discussion and negotiation not lead to a resolution of such controversy within fifteen (15) days of the date of notice of the controversy, then the Parties agree to submit the dispute or controversy to mediation and agree to employ the services of Retired Judge Fred Sharer, retired from the Court of Special Appeals of the State of Maryland, as the Mediator. Any such mediation shall be conducted in Washington County, Maryland and within thirty (30) days of the date of notice of the existence of the controversy and the Parties agree to participate in good faith in the mediation. Should the mediation not lead to a resolution, then any claims which remain or disputes or controversies shall be presented to the Circuit Court for Washington County, Maryland.

16. **CONSTRUCTION.** Each party and counsel for each party have reviewed and revised this Agreement, and no party shall be construed to be the drafter thereof. Accordingly, the normal rule of construction that ambiguities shall be construed against the drafting party shall not be employed in the interpretation of this Agreement.

17. **CAPTIONS.** Titles or captions contained in this Agreement are used for convenience or reference only and are not intended to and shall not in any way enlarge, define, limit, extend or describe the rights or obligations of the parties or affect the meaning or construction of this Agreement, or any provision or portion thereof.

18. **COUNTERPARTS.** This Agreement may be executed in two or more faxed or e-mailed counterparts, each of which shall be deemed to be an original and all of which together shall be deemed one and the same Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the date below mentioned.

THE CITY OF HAGERSTOWN

By: _____
Print Name: _____
Title: _____
Date: _____

Witness: _____

**SUSSEX INSURANCE COMPANY, for itself and
as successor to, COMPANION PROPERTY AND
CASUALTY INSURANCE COMPANY**

By: Philip S. Tobey
Print Name: Philip S. Tobey
Title: Attorney-in-Fact
Date: April 29, 2016

Witness: Megan Bauer

PARTNERS MARKETING, LLP (Pursuant to the attached Power of Attorney)

By: Keith Feully
Print Name: Keith Feully
Title: Bondex Insurance Company by Philip Tobey President
Date: April 29, 2016

Witness: Megan Bauer

And By: _____
Thomas Petrizzo

Witness: _____

KEITH FEULLY (Pursuant to the attached Power of Attorney)

Keith Feully

Witness: Megan Bauer

EC COMMODITIES, CORP.

By: _____
Print Name: _____
Title: _____
Date: _____

Witness: _____

THOMAS PETRIZZO

Witness: _____

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is entered into this ____th day of _____, 2016, by and between The City of Hagerstown (the "City"), Sussex Insurance Company, for itself and as successor to Companion Property and Casualty Insurance Company ("Sussex"), Partners Marketing, LLP ("Partners") and Keith Feuilly ("Feuilly"), EC Commodities, Corp., and Thomas Petrizzo ("Petrizzo") (collectively, the "Parties").

RECITALS

WHEREAS, on June 13, 1996, Hagerstown Fiber & Light Limited Partnership conveyed a parcel of property in Washington County, Maryland, to Partners. This property is further described in a Deed dated June 13, 1996, and recorded in the Washington County Land Records at Liber 01278, folio 00787 (the "Property"). The Property contains a dilapidated, vacant and partially demolished building known as the former Municipal Electric Light Plant Building (the "MELP Building"). Partners continues to own the Property; and

WHEREAS, on May 21, 2014, the City filed, in Washington County Circuit Court, a Complaint for Condemnation (Eminent Domain) of the Property described in the aforementioned Deed (Case No. 21C14050621) (the Condemnation Litigation); and

WHEREAS, the City and Partners subsequently entered into a Release and Settlement Agreement (the "Contract" or "Settlement Agreement"), wherein Partners agreed, among other things, to demolish the MELP building, complete a series of other demolition, asbestos abatement, PCB decontamination, and site work projects on the MELP Building or adjacent thereto, secure and provide proof of the issuance of a surety bond in the amount of \$850,000.00, and, upon completion of the demolition and other related work, tender clean title and possession

of the Property to the City no later than July 1, 2015 (the "MELP Project"). A copy of the Settlement Agreement is attached hereto as Exhibit A; and

WHEREAS, Keith Feuilly and Thomas Petrizzo are/were member of Partners; and

WHEREAS, on October 9, 2014, Sussex executed and issued Performance/Surety Bond Number DSG0001168 in the Penal Sum of Eight Hundred and Fifty Thousand and 00/100 Dollars (\$850,000.00) (the "Bond"). The principal under the Bond is Partners, and the obligee is the City. The Bond is attached hereto and incorporated herein as Exhibit B; and

WHEREAS, a dispute arose between Partners and the City relating to Partners' performance of the Contract; and

WHEREAS, Sussex, in May 2015, sent the City a purported Cancellation Notice with respect to the Bond; and

WHEREAS, on June 29, 2015, the City filed a Declaratory Judgment Complaint against Sussex and other related parties. The Complaint, *The City of Hagerstown v. Sussex Insurance Company d/b/a Companion Property and Casualty Insurance Company, et al.* (Case No. 21-C-15-54365 -CN) is still pending in the Circuit Court for Washington County (the "Declaratory Judgment Litigation"); and

WHEREAS, on October 16, 2015, the City sent a Notice of Default to Partners under the Contract, providing Partners with thirty (30) days to cure its default. Partners did not cure its default within thirty (30) days of the October 16, 2015 Notice of Default, nor did Partners complete the MELP Project or close in accordance with the Settlement Agreement at any point thereafter; and

WHEREAS, on October 16, 2015, as a result of the dangerous condition in existence due to the partially demolished MELP Building, the City's Code Administration Division issued a

Notice of Violation to Partners, advising Partners that, in general, the Property was in violation of the City's Property Maintenance because structures on the Property were unsafe, unfit for human occupancy, unlawful, and/or so old, dilapidated or out of repair as to be dangerous, unsafe, unsanitary or otherwise unfit for human habitation or occupancy. The Notice of Violation directed compliance with a demolition order and inspection by November 16, 2015; and

WHEREAS, Partners appealed the Notice of Violation to the City's Board of Code Appeals. On November 24, 2015, the Board of Code Appeals affirmed the finding of the Code Official, finding in favor of the City. Thereafter, the City continued to take necessary action to fence and contain the Property in order to protect the community from the dangerous, unsafe, and unsanitary conditions; and

WHEREAS, the MELP Building remains in a dangerous, partially demolished condition; and

WHEREAS, the City and Sussex, for itself and pursuant to a Power of Attorney executed by Partners and Feuilly, have engaged in good faith discussions in an effort to resolve their disputes arising from any acts or omissions that may have occurred up until and including the date of this Agreement and relating to the Property, the MELP Project, the Contract, and/or the Bond, including but not limited to the claims asserted by the City in the Condemnation Litigation and the Declaratory Judgment Litigation, and the Parties now memorialize the agreement they have reached as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the covenants contained herein, and other good and sufficient consideration, the receipt of which is hereby acknowledged, and the foregoing Recitals, the Parties agree to the following terms of settlement in full and final satisfaction of any

and all claims or potential claims by and between or among the Parties arising from any acts or omissions that may have occurred up until and including the date of this Agreement and relating to the Property, the MELP Project, the Contract, and/or the Bond, including but not limited to the claims asserted by the City in the Condemnation Litigation and the Declaratory Judgment Litigation, so as to avoid the expense and inconvenience of litigation, and without the admission of liability by any of the Parties whatsoever:

1. **INCORPORATION OF RECITALS.** The above Recitals are hereby affirmed and incorporated herein as if fully set forth.

2. **EFFECTIVE DATE OF THIS AGREEMENT.** This Agreement is effective as of the date it is fully executed by the Parties.

3. **WARRANTIES.**

3.1 The Parties warrant and represent that they and/or their representatives pursuant to a Power of Attorney have been fully informed and have full knowledge of the terms, conditions and effects of this Agreement.

3.2 The Parties warrant and represent that they have, personally or through their attorney and/or representative pursuant to a Power of Attorney, fully investigated, to such Party's full satisfaction, all facts surrounding the various claims, controversies and disputes and are fully satisfied with the terms and effects of this Agreement.

3.3 The Parties warrant and represent that no promise, representation or inducement has been offered or made except as set forth herein, and that this Agreement is executed without reliance upon any statement or representation by any other Party or its (his) agent.

3.4 The Parties warrant and represent that, to the best of their knowledge, no other person or entity has any interest in any of the claims referred to in this Agreement and that they

have not sold, assigned, transferred, conveyed or otherwise disposed of any claims, judgments, demands, obligations, or causes of action referred to in this Agreement and that each of the Parties' representatives has legal capacity to execute this Agreement in all respects.

3.5 The Parties warrant and represent that this Agreement constitutes a legal, valid and binding obligation of the Parties, enforceable against each of them in accordance with its terms.

4. ENTIRE AGREEMENT. This Agreement supersedes and replaces all prior agreements between the Parties.

5. NO ADMISSION OF LIABILITY. By executing this document, the Parties acknowledge and agree that the execution, delivery and acceptance of this Agreement is not an admission, waiver, acknowledgement, nor evidence of any liability whatsoever by any individual or entity. Neither this Agreement nor the terms hereof, nor any negotiations or proceedings connected herewith, shall be offered or received in evidence in any form for any purpose other than for the purpose of the effectuation of or enforcement of this Agreement, and, without limitation, shall not be used in any proceeding as an admission of liability or wrongdoing whatsoever by the Parties, or as an admission that any party suffered any injury, or as an admission of any of the averments of the pleadings. However, Sussex may use this Agreement as evidence in connection with any litigation involving any of its indemnitors and it may also utilize this Agreement for purposes of reinsurance, if any.

6. MUTUAL RELEASE.

6.1 In consideration of the covenants contained herein, the receipt of the Settlement Payment outlined in Paragraph 7 below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City, for itself and its agents, attorneys,

representatives, successors and assigns, hereby forever releases and discharges Sussex, Partners, Feuilly, EC Commodities, Corp., and Petrizzo, and their respective agents, attorneys, representatives, personal representatives, heirs and devisees, and successors and assigns (the "First Released Parties"), from any claim, demand, right or cause of action, whether presently known or unknown, suspected or unsuspected, disclosed or undisclosed, matured, unmatured, liquidated or contingent, of whatever nature or kind in law, equity, administrative proceedings or otherwise, which the City had, has or may have against the First Released Parties arising from any acts or omissions that may have occurred up until and including the date of this Agreement, and relating in any way to the Property, the MELP Project, the Contract, and/or the Bond, including but not limited to the claims asserted by the City in the Condemnation Litigation and the Declaratory Judgment Litigation.

6.2 In consideration of the covenants contained herein, the City's receipt of the Settlement Payment provided for in Paragraph 7 below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sussex, Partners, Feuilly, EC Commodities, Corp., and Petrizzo, for themselves and their respective agents, attorneys, representatives, personal representatives, heirs and devisees, and successors and assigns, hereby forever release and discharge the City, and its agents, attorneys, representatives, successors and assigns, (the "Second Released Parties"), from any claim, demand, right or cause of action, whether presently known or unknown, suspected or unsuspected, disclosed or undisclosed, matured, unmatured, liquidated or contingent, of whatever nature or kind, in law, equity, administrative proceedings or otherwise, which Sussex, Partners, Feuilly, EC Commodities, and Petrizzo, and their respective agents, attorneys, representatives, personal representatives, heirs and devisees, and successors and assigns had, has or may have against the

Second Released Parties arising from any acts or omissions that may have occurred up until and including the date of this Agreement and relating in any way to the Property, the MELP Project, the Contract, and/or the Bond.

6.3 COVENANT NOT TO SUE. In consideration of the covenants contained herein, the City's agreement to accept and the receipt of the payment provided for in Paragraph 7 below and for other good and valuable consideration, the Parties identified as the First Released Parties in Paragraph 6.1 above, should any dispute or controversy arise or exist between or among them, hereby agree and covenant not to sue or pursue any claims (in Court or before an administrative body), or make any demands, seek any relief, or file any lawsuit (or any claims, counterclaims or third-party claims therein) against the City and any other persons or entities identified as the Second Released Parties hereinabove in Paragraph 6.2. In the event that one or more of the First Released Parties files a lawsuit, pursues any claim (in Court or before an administrative body), makes any demands, seeks any relief, or files any counterclaims or third-party claims against the City and any other persons or entities identified as the Second Released Parties hereinabove in Paragraph 6.2, and one or more of the First Released Parties asserts that the Power of Attorney relied upon by Sussex in executing this Agreement on behalf of Partners and Feuilly is invalid for any reason whatsoever, Sussex agrees to defend and indemnify the City in any such action from any and all damages, claims, costs, expenses, including but not limited to reasonable attorney's fees, suffered, incurred or expended in any such proceedings. Further, to the extent that the City files suit to enforce the terms of this Agreement and any of the persons or entities identified as the First Released Parties hereinabove in Paragraph 6.2 asserts as a defense that the Power of Attorney relied upon by Sussex in executing this Agreement on behalf of Partners and Feuilly is invalid for any reason whatsoever, Sussex agrees to indemnify the City

from any and all costs and expenses incurred in any such enforcement proceeding, including but not limited to reasonable attorney's fees. This covenant not to sue is intended to be interpreted as broadly as possible so as to protect the City and the other parties identified as the Second Released Parties in Paragraph 6.2 of and from any and all continued claims or exposure with respect to the Property, the MELP Building, the MELP Project, the Contract or otherwise.

7. **PAYMENT.** In consideration of the covenants contained herein, the release, and other consideration recited herein, the Parties agree that Sussex, within eleven (11) business days of the execution hereof, shall pay or cause to be paid to the City the total amount of Five Hundred Thousand Dollars (\$500,000.00) (the "Settlement Payment"). Sussex shall make the Settlement Payment payable to "The City of Hagerstown" and shall deliver the Settlement Payment to the attention of Paul D. Rose, Jr., Miles & Stockbridge, PC, 30 West Patrick Street, 5th Floor, Frederick, Maryland 21701. The Settlement Payment must be paid and received within eleven (11) business days of execution hereof.

8. **DISMISSAL OF THE DECLARATORY JUDGMENT LITIGATION.** Promptly upon the full execution of this Agreement and the receipt of the Settlement Payment, the Parties, through their counsel, shall execute and file a Stipulation of Dismissal With Prejudice of all claims asserted in the Declaratory Judgment Litigation. The City shall pay the \$15.00 cost associated with filing the Stipulation of Dismissal With Prejudice.

9. **COOPERATION BY THE FIRST RELEASED PARTIES WITH RESPECT TO THE CITY'S DEMOLITION OF THE MELP BUILDING.**

Upon the full execution of this Agreement, and pursuant to its police powers as a Maryland municipal corporation, the City shall complete the demolition of the MELP Building as necessary to abate the dangerous condition and bring the Property into compliance with the Property Maintenance Code. Keith Feuilly and Partners Marketing, pursuant to the Power of

Attorney as well as pursuant to an email from Keith Feuilly, agree to cooperate with regard to the City's demolition of the MELP Building, to provide the City, its agents and contractors full access to the Property during the demolition process, and not to object in any way (including any appeal or other litigation) to the City's demolition of the MELP Building. All contractors retained by the City shall name the City and Partners as additional insureds on their insurance coverage. The demolition work to be performed by or on behalf of the City shall be limited to bringing the property into compliance with the City Property Maintenance Code and eliminating the dangerous, partially demolished condition of the MELP Building, the extent and conduct of which shall be within the sole and absolute discretion of the City. The City makes no representations or warranties about the work to be performed or the condition of the Property upon completion thereof.

10. TERMINATION OF THE CONTRACT AND DISMISSAL OF CONDEMNATION LITIGATION.

Upon the completion of the demolition of the MELP Building, the City shall terminate the Contract between the City and Partners and the City will dismiss its existing Complaint for Condemnation against Partners (Case No. 21C14050621) by filing a Notice of Dismissal.

11. MODIFICATION. This Agreement constitutes the entire understanding between the Parties with respect to the matters asserted, or which could have been asserted, in the Litigation and any promises, representations or warranties not herein contained shall have no force and effect. No supplement, modification or amendment to this Agreement shall be binding or effective unless executed in writing and signed by the Parties.

12. APPLICABLE LAW. This Agreement shall be delivered in the State of Maryland and shall be governed, construed and interpreted in all respects in accordance with the laws of the State of Maryland. The parties hereby agree that should any legal proceeding be initiated

hereunder, following the dispute resolution process provided for in Paragraph 15 below, any such proceeding shall be brought and the parties shall be subject to the jurisdiction of the Circuit Court for Washington County, Maryland.

13. **BENEFIT AND BURDEN.** This Agreement shall be binding upon and shall inure to the benefit of each of the Parties hereto and each of their heirs, devisees and personal representatives and/or their successors and assigns as the case may be.

14. **SEVERABILITY.** In the event that any provision or any portion of any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision or portion thereof, unless the absence of that provision or portion thereof materially alters the rights and obligations of the Parties hereto.

15. **DISPUTE RESOLUTION.** Should any dispute or controversy arise hereunder, the Parties agree to provide written notice thereof to all affected parties and further agree to seek to resolve any such dispute first by informal discussion and negotiation and, should such discussion and negotiation not lead to a resolution of such controversy within fifteen (15) days of the date of notice of the controversy, then the Parties agree to submit the dispute or controversy to mediation and agree to employ the services of Retired Judge Fred Sharer, retired from the Court of Special Appeals of the State of Maryland, as the Mediator. Any such mediation shall be conducted in Washington County, Maryland and within thirty (30) days of the date of notice of the existence of the controversy and the Parties agree to participate in good faith in the mediation. Should the mediation not lead to a resolution, then any claims which remain or disputes or controversies shall be presented to the Circuit Court for Washington County, Maryland.

16. **CONSTRUCTION.** Each party and counsel for each party have reviewed and revised this Agreement, and no party shall be construed to be the drafter thereof. Accordingly, the normal rule of construction that ambiguities shall be construed against the drafting party shall not be employed in the interpretation of this Agreement.

17. **CAPTIONS.** Titles or captions contained in this Agreement are used for convenience or reference only and are not intended to and shall not in any way enlarge, define, limit, extend or describe the rights or obligations of the parties or affect the meaning or construction of this Agreement, or any provision or portion thereof.

18. **COUNTERPARTS.** This Agreement may be executed in two or more faxed or e-mailed counterparts, each of which shall be deemed to be an original and all of which together shall be deemed one and the same Agreement.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on the date below mentioned.

THE CITY OF HAGERSTOWN

By: _____

Witness: _____

Print Name: _____

Title: _____

Date: _____

**SUSSEX INSURANCE COMPANY, for itself and
as successor to, COMPANION PROPERTY AND
CASUALTY INSURANCE COMPANY**

By: _____
Print Name: _____
Title: _____
Date: _____

Witness: _____

PARTNERS MARKETING, LLP (Pursuant to the attached Power of Attorney)

By: _____
Print Name: _____
Title: _____
Date: _____

Witness: _____

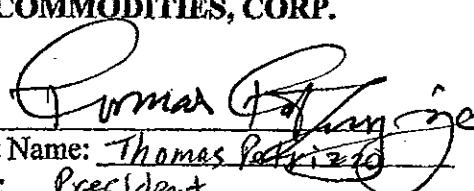
And By: 
Thomas Petrizzo

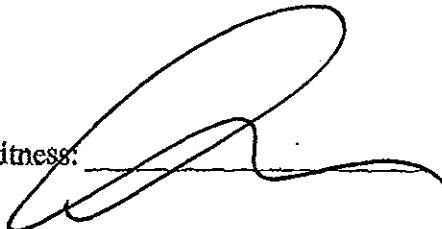
Witness: 

KEITH FEUILLY (Pursuant to the attached Power of Attorney)

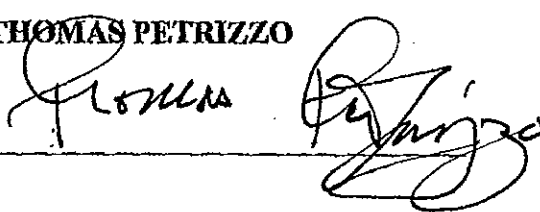
Witness: _____

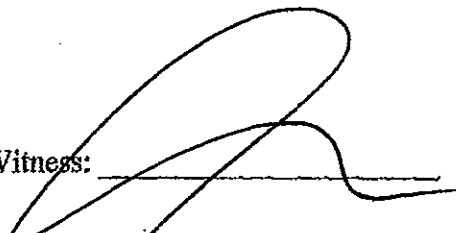
EC COMMODITIES, CORP.

By: 
Print Name: Thomas Petrizzo
Title: President
Date: May 4, 2016

Witness: 

THOMAS PETRIZZO



Witness: 

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT is made by and between the City of Hagerstown, a Maryland Municipal Corporation located at 1 E. Franklin Street, Hagerstown, Maryland (hereinafter referred to as the "City") and Partners Marketing, LLP, a Virginia limited liability partnership with an address of *336 Birch Hill St* (hereinafter referred to as the "Partners Marketing") (collectively the "Parties").
Box NY 10474

WHEREAS, Partners Marketing is the record owner of a certain parcel of real property located in Hagerstown, Washington County, Maryland, containing approximately 2.9633 acres, more or less, which property is designated as Lot No. 2 on a subdivision plat dated February 2, 1993 and recorded among the Land Records of Washington County, Maryland at Plat Book No. 3988, which property is known as the former Municipal Electric Light Plant (the "MELP Property"); and

WHEREAS, the City enjoys an easement over the MELP Property for the maintenance of a 54 inch underground wastewater collector (hereinafter the "utility line") and maintains an electric plant substation and overhead sub-transmission and distribution circuits immediately adjacent to the MELP Property (hereinafter the "electric utilities") (collectively the "City Utilities"); and

WHEREAS, the City and Partners Marketing have been involved in a dispute and ongoing discussions regarding the deteriorated condition and security of the MELP Property and the effect of these conditions on the City Utilities; and

WHEREAS, the dispute is currently the subject of litigation between the Parties in Case Number 21-C-14-50621 pending in the Circuit Court for Washington County, Maryland, (the "Litigation"); and

WHEREAS, the City and the Partners Marketing desire to resolve the dispute as set forth herein according to the terms set forth in this Release and Settlement Agreement;

NOW THEREFORE, WITNESSETH, in consideration of the foregoing recitals, the payment of Six Hundred Fifty Thousand, Dollars and 00/100 (\$650,000.00) from the City to Partners Marketing, the transfer of title of the MELP Property from Partners Marketing to the City, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is AGREED as follows:

1. **Incorporation of Recitals.** The recitals to this Agreement be and are incorporated by reference herein as if restated verbatim.

2. **Settlement of all Claims.** The following terms for settlement are agreed to by the Parties:

A. *Transfer of title; Purchase Price.* Partners Marketing shall sell to the City and the City shall buy from Partners Marketing the MELP Property for the purchase price of four hundred thousand dollars (\$400,000.00) at closing, upon the satisfaction or affirmative waiver of each condition precedent enumerated herein.

B. *Contribution for Remediation.* In addition to the purchase price, and contingent upon the satisfaction or affirmative waiver of each condition precedent enumerated herein, the City shall also pay two hundred fifty thousand dollars (\$250,000.00) to Partners Marketing at closing, representing a negotiated contribution by the City to Partners Marketing in connection with the performance of the work to be performed by Partners Marketing. It is the purpose and intent of the parties that the City, as a previous owner and operator of the MELP Property, contribute to the costs of asbestos abatement and PCB decontamination within the buildings on the property prior to closing, and but for the City's agreement to do so, Partners Marketing would not undertake to initiate and complete such work or to transfer title to the City.

C. *Closing.* The settlement of the purchase and sale of the MELP Property (the "Closing") shall take place within thirty (30) days after the satisfaction or affirmative waiver of each of the conditions precedent enumerated herein, or at such earlier time as agreed to by the parties, but in no event later than the 1st day of July, 2015, (the "Outside Closing Date") at the offices of the attorneys for the City located at 207 S. Potomac Street, Hagerstown, Maryland. At closing Partners Marketing shall deliver to the City possession of the MELP Property free of any and all tenancies other rights or claims of right to its use or occupancy, except for permitted encumbrances.

D. *Title.* At Closing, Partners Marketing shall convey to the City the title to the MELP Property which shall be good and marketable, of record and in fact, and insurable at regular rates by a national title insurance company to be selected by the City, in fee simple, by a special warranty deed, and will give such further assurances thereof as may be requisite, subject to and only to the operation and effect of the following instruments and matters (hereinafter referred to collectively as "the Permitted Encumbrances"):

i. any and all instruments and matters of record among the Land Records of the said County or in fact on the date hereof except (a) any mortgage, deed of trust or judgment lien, lien for unpaid taxes due, each of which Partners Marketing shall at its expense cause to be released at or before Closing and (b) any other such instrument or matter which is set forth as an exception to coverage in a commitment for title insurance from such title insurer and covering the Property, to be obtained by the City.

ii. any unrecorded easement, discrepancy or conflict in boundary lines, shortage in area or other matter if and to the extent that (a) it exists on the date hereof and (b) the existence thereof would be revealed by an accurate and complete survey of the MELP Property if made on the date hereof by a licensed professional land surveyor or civil engineer.

iii. any and all easements or matters shown on the Subdivision Plat.

E. *Condition of the Property.* Except as set forth in subsection 2.G, Partners Marketing makes no warranty to the City as to the quality or physical condition of the Property, which is being sold and purchased and accepted hereunder in an "AS IS" condition as of the Closing Date. In addition, with the exception of any losses or claims arising directly from the negligent acts, omissions or misrepresentations of Partners Marketing, its contractors, or subcontractors performing the Work as defined in subsection 2.G, the City hereby agrees, to the extent permitted by law, to indemnify, pay, defend, and hold Partners Marketing harmless from and against all liability, obligation, losses, damages, including, without limitation, third party consequential damages, diminution in value and lost profits, damages or claims, actions, penalties, causes of action, costs, disbursements or expenses whatsoever including attorneys' fees and costs and costs of appeal, as a result of or with respect to the following, if such arise after transfer of the MELP Property: (i) any environmental claim relating to or arising from the Property; (ii) the violation of any Environmental Laws in connection with the MELP Property; (iii) the presence or Release of Hazardous Materials on, to or from the MELP Property; (iv) any environmental remediation. As used in this Agreement, the following terms shall have the following meanings: **Environmental Laws** shall mean all federal, state and local laws relating to Hazardous Materials or protection of

the environment, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*; the Clean Water Act ("CWA"), 33 U.S.C. 1251 *et seq.*; the Clean Air Act ("CAA"), 42 U.S.C. 7401 *et seq.*; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. 2601 *et seq.*; the Occupational Safety and Health Act ("OSHA"), 29 U.S.C. 651 *et seq.*; and the Hazardous Materials Transportation Act ("HMTA"), 49 U.S.C. 5101 *et seq.*, and all comparable state and local laws, all as amended from time to time. **Hazardous Materials** shall mean, collectively, any oil, flammables, asbestos, mold, urea formaldehyde insulation, radioactive materials, hazardous wastes, toxic or contaminated substances or similar materials, including, without limitation, any substances that have been listed or designated as a "hazardous substances," "hazardous waste", hazardous material", toxic substance", "regulated substance", "waste" or pollutant" under any Environmental Law. **Release** shall mean any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing or other movement of Hazardous Materials into the environment. **Remediation** shall mean any investigation, site monitoring, containment, cleanup, removal, restoration, implementation and maintenance of any institutional or engineering controls, or any other activity of any kind which is reasonably necessary or required under any Environmental Law. The indemnification obligations in this Section shall survive Closing or any termination of this Agreement before Closing.

F. *Closing Costs; Adjustments.*

i. Partners Marketing and the City shall each bear one-half (1/2) of the cost of any recording fee and any state or county recordation tax, documentary stamp tax or other transfer tax or fee incurred in recording the said deed among the Land Records of Washington County.

ii. The real property taxes upon the MELP Property, and each tax, fee or other charge levied or assessed against the MELP Property by the City of Hagerstown, Maryland, Washington County, Maryland, or any other public or quasi-public authority before, at or as a result of Closing, and payable in one or more installments falling due not less frequently than annually (hereinafter referred to collectively as "Taxes"), shall be apportioned pro rata between the parties hereto as of Closing, based upon the Taxes or installment thereof for the entire year, except for any penalty for post-payment thereof, which shall be paid by Partners Marketing at or before Closing, and any adjustment required to accomplish the same may be made after Closing, if necessary and paid thereafter by the City.

G. *Conditions Precedent to Closing.* The obligation of the City to complete Closing and honor its obligations hereunder shall be subject to and conditioned upon the satisfaction or affirmative, written waiver of the following conditions precedent:

i. *Title and Possession.* Partners Marketing tendering title and possession of the MELP Property pursuant to this Section 2.

ii. *Demolition of Improvements.* Partners Marketing, at its sole cost and expense except as provided herein, and in a professional and workmanlike manner, shall complete the demolition of the existing improvements on the MELP Property in accordance with provisions set forth within the City approved Demolition Plan and Demolition Permit, attached hereto as Exhibit A and

incorporated herein by reference, as well as all MDE permits and requirements, and subject to all applicable regulations, restrictions and requirements. Partners Marketing shall obtain a demolition permit and all other necessary permits and approvals prior to commencing any such demolition or related work, and shall provide a copy of such permits to the City. Partners Marketing shall obtain all necessary inspections of the demolition and related work in a timely manner. Partners Marketing shall maintain ownership and control of all salvage and equipment removed from the MELP Property. All equipment shall be drained of fluids prior to removal. The City shall permit Partners Marketing, its contractors and subcontractors the right to enter upon the adjoining property of the City and use such area for purposes reasonably related to the storage of non-hazardous materials and equipment associated with the demolition and related work.

iii. *Demolition of City Improvements.* Partners Marketing, at its sole cost and expense except as provided herein, and in a professional and workmanlike manner, shall complete the demolition of the coal tipple on City property located upon the adjoining property to the MELP Property in accordance with provisions set forth within the City approved Demolition Plan and Demolition Permit, attached hereto as Exhibit A and incorporated herein by reference, as well as all MDE permits and requirements, and subject to all applicable regulations, restrictions and requirements. The City shall permit Partners Marketing, its contractors and subcontractors the right to enter upon the said adjoining property of the City to complete this demolition and related work. Partners Marketing shall obtain a demolition permit and all other necessary permits and approvals prior to commencing any such demolition or related work, and shall provide a copy of all such permits to the City. Partners Marketing shall obtain all necessary inspections of the demolition and related work in a timely manner. Partners Marketing shall maintain ownership and control of all

salvage and equipment removed from the adjoining City property. All equipment shall be drained of fluids prior to removal.

iv. *Asbestos Abatement.* Partners Marketing, at its sole cost and expense except as provided herein, shall engage a Maryland licensed asbestos inspection and remediation subcontractor, acceptable to the City to complete all asbestos abatement and material disposal in connection with the demolition of the improvements contemplated in 2.G.ii and iii above in accordance with the requirements of the Maryland Department of the Environment ("MDE"), and all other regulations, restrictions and requirements applicable thereto. Partners Marketing shall obtain all necessary permits and approvals prior to commencing any such asbestos abatement and remediation, material disposal and related work prior to commencing any such work, and shall provide a copy of all such permits to the City. Partners Marketing shall obtain all necessary inspections for the asbestos related work in timely manner. Partners Marketing shall obtain and deliver to the City, for the benefit of the City as the contract purchaser of the MELP Property and as the owner of the adjoining property, a final report and certification from an independent certified industrial hygienist that the Asbestos Abatement Work has been completed in full compliance with all applicable federal, state and local asbestos laws and regulations. At any reasonable time, the City, its agents or contractors may enter the MELP Property to inspect, test or study the property, including but not limited to testing surface and subsurface conditions or making test borings.

v. *PCB Decontamination.* Partners Marketing, at its sole cost and expense except as provided herein, and in a professional and workmanlike manner, shall complete all PCB decontamination and abatement within the interior of the improvements to be demolished as contemplated in 2.G.ii and iii above, including material disposal, all in accordance with the Toxic

Substances Control Act (TSCA 15 U.S.C. 2601 *et seq.*(1976)) and standards and requirements of the United States Environmental Protection Agency ("EPA") and the Maryland Department of the Environment ("MDE"), and all other regulations, restrictions and requirements applicable thereto (the "PCB Decontamination Work"). Partners Marketing shall obtain all necessary permits and approvals prior to commencing any such PCB Decontamination Work, and related work and shall provide a copy of all such permits to the City. Partners Marketing shall obtain all necessary inspections for the PCB related work in timely manner. Partners Marketing shall obtain and deliver to the City, for the benefit of the City as the contract purchaser of the MELP Property and as the owner of the adjoining property, a final report and certification from an independent certified industrial hygienist that the PCB Decontamination Work has been completed in full compliance with all applicable federal, state and local PCB decontamination laws and regulations. At any reasonable time, the City, its agents or contractors may enter the MELP Property to inspect, test or study the property, including but not limited to testing surface and subsurface conditions or making test borings.

vi. *Site Work.* Partners Marketing, at its sole cost and expense except as provided herein, and in a professional and workmanlike manner, shall complete all site work on the MELP Property in accordance with the provisions set forth within the City approved Demolition Plan and Demolition Permit, attached hereto as Exhibit A and incorporated herein by reference, as well as all MDE permits and requirements which shall include final grading and seeding in accordance with all applicable regulations, restrictions and requirements. Partners Marketing shall obtain all necessary permits and approvals prior to commencing any such site and related work and shall provide a copy of all such permits to the City. Partners Marketing shall obtain all necessary

inspections for the site work in timely manner.

vii. *Protection of City Utilities.* Partners Marketing, at its sole cost and expense shall be responsible for the protection of all City Utilities on the MELP Property, the adjoining City property and any immediately adjacent property. Partners Marketing shall install and maintain temporary protection over the utility line to the satisfaction of the City. The City may, at all reasonable times enter upon the MELP Property to monitor and inspect the City Utilities and the protections and safeguards in place. Partners Marketing, its contractors and subcontractors shall be solely and exclusively responsible for any damage or destruction caused to the City Utilities during the work.

viii. *Contractors/Subcontractors.* Prior to the commencement of the work contemplated hereinabove, Partners Marketing shall provide to the City proof of the issuance of a surety bond to its Contractor from a licensed Maryland insurer in favor of Partners Marketing and the City in the amount of Eight Hundred Fifty Thousand Dollars (\$850,000.00) to assure the completion of the Demolition Work and the Asbestos abatement and PCB decontamination and disposal contemplated hereunder. Partners Marketing shall also provide certificates of insurance from its contractor and subcontractors evincing commercially reasonable amounts of General Comprehensive Liability insurance, Contractors Pollution Liability and Errors and Omissions insurance, and Workers' Compensation insurance.

ix. *Release of Liens.* Partners Marketing shall provide releases of mechanics liens from the contractor and all subcontractors performing work or supplying materials in connection with any work performed on the MELP Property of the adjoining City property. Anything to the contrary contained herein notwithstanding, Partners Marketing shall remain solely liable for any lien, claim

or cost incurred as a result of a failure to so obtain such release(s).

3. **Litigation.** Beginning on the date of this Release and Settlement Agreement and continuing through the Outside Closing Date enumerated in paragraph 2.C. above, the parties shall not actively engage in the prosecution or defense of the pending Litigation. Partners Marketing shall not be required to file its initial pleading or respond to open discovery requests, nor shall the City move to default or otherwise sanction Partners Marketing for a failure to do so at any time prior to the expiration of thirty (30) days after (i) the Outside Closing Date or (ii) an event of default pursuant to provision 5 hereof, whichever occurs first. The foregoing notwithstanding, the Litigation shall be dismissed with prejudice with each party being responsible for its open court costs upon the satisfactory transfer of title from Partners Marketing to the City pursuant hereto.

4. **General Release.**

A. Except as limited by paragraph 2.E above, the City hereby fully and finally releases, acquits and forever discharges Partners Marketing, its partners, agents, principals, predecessors, successors, assigns, and insurers from all claims and demands of whatsoever nature, action and causes of action, damages, costs, attorney's fees, and money benefits or compensation of any kind on account of or in anyway arising out of the aforementioned dispute, and any issues raised in the litigation, known or unknown, having already resulted or to result at anytime in the future, known or unknown, whether or not they arise following the execution of this Release and Settlement Agreement.

B. Partners Marketing, for itself, its partners and principals hereby fully and finally releases, acquits and forever discharges the City, including its officers, agents,

principals, predecessors, assigns, and insurers from all claims and demands of whatsoever nature, action and causes of action, damages, costs, attorney's fees, and money benefits or compensation of any kind on account of or in anyway arising out of the aforementioned dispute, and any issues raised in the litigation, known or unknown, having already resulted or to result at anytime in the future, known or unknown whether or not they arise following the execution of this Release and Settlement Agreement.

C. The undersigned parties agree that this release represents a full and complete settlement between the parties of the dispute and the litigation between the Parties, regardless of the adequacy of compensation and the parties further agree that the released parties have no obligation to make any payment or do any act other than as set forth herein.

D. The undersigned parties represent that prior to signing this Release and Settlement Agreement they have read it, understood the terms and conditions, were given an opportunity to consult with counsel and voluntarily signed it with full authority to do so after conferring with their respective attorneys.

5. Default. Upon any default by either party hereto in performing its obligations hereunder to complete Closing or in a timely fashion to take any action which it is required to take before or as a condition of Closing, the respective rights and obligations hereunder of the parties hereto at law or in equity shall be as follows:

A. Partners Marketing Rights. If the City is the defaulting party, Partners Marketing shall be entitled to exercise any and all rights and pursue any and all remedies to which Partners

Marketing may be entitled at law or in equity, including a claim for damages or specific performance. Partners Marketing may alternatively terminate this agreement, upon which the parties shall have no further obligation hereunder.

B. City Rights. If Partners Marketing is the defaulting party, the City shall be entitled to exercise any and all rights and pursue any and all remedies to which the City may be entitled at law or in equity, including a claim for damages or specific performance, which may include (i) execution upon the performance bond required pursuant to provision 2.G.viii hereof and completion of the work contemplated herein and purchase of the MELP Property pursuant to the terms hereof, (ii) proceed to prosecute the Litigation, or (iii) terminate this agreement, upon which the parties shall have no further obligation hereunder.

C. Notice. Neither party hereto shall be entitled to exercise any right under this default provision unless it gives the defaulting party notice of its intention to take such action by at least thirty (30) days prior written notice, and unless during such period the defaulting party has not (i) cured such default, (ii) received notice from the non-defaulting party that the non-defaulting party has expressly and affirmatively waived the specific event of default for which notice was given, (iii) in the case of an event of default involving the condition of title under provision 2.D hereof which is not reasonably capable of being cured within such period, diligently taken steps to cure such default and thereafter pursues the same to completion, or (iv) in the case of an event of default involving the work contemplated under in provisions 2.G.ii through 2.G.vi hereof which is not reasonably capable of being cured within such period, diligently taken steps to cure such default and pursues the same to completion.

6. Miscellaneous.

- A. Final Settlement. This writing constitutes the complete, final and entire understanding of the parties hereto, and they shall not be bound by any terms, covenants, conditions or representations not expressly herein contained, in writing.
- B. Contingency. This agreement and the terms hereof are contingent upon approval and adoption hereof by the Mayor and Council of the City of Hagerstown, its duly constituted legislative body, and becoming effective and binding upon the City.
- C. Modification. This agreement may not be modified or changed orally but only by an agreement in writing signed by the parties against whom enforcement of any such change is sought.
- D. Notices. Any notice or communication required or contemplated hereunder shall be in writing and shall be made by prepaid, next day U.S. mail, FedEx or other national courier service, facsimile transmission or electronic mail and shall be deemed provided twenty four (24) hours after being sent, to:
- For Partners Marketing: To its attorney, Robert J. Kresslein, Esq. at
Frederick, Maryland 21701.
- For the City: To its attorney, Mark K. Boyer, Esq. at 207 South Potomac
Street, Hagerstown, Maryland 21740.
- E. Choice of Law. This agreement shall be governed by and interpreted by the Laws of the State of Maryland.
- F. Construction. This agreement shall be construed without regard to any presumption or other rule requiring construction against the party who caused it to have been

drafted.

- G. Counterparts. This agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same agreement.

WITNESS, our hands and seals this 21st day of October, 2014.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

Donna K. Spickler
Donna K. Spickler, City Clerk

CITY OF HAGERSTOWN, MARYLAND

By: David S. Gysberts
David S. Gysberts, Mayor

WITNESS AND ATTEST
AS TO CORPORATE SEAL

PARTNERS MARKETING, LLP
BY: Hagerstown Commodities, LLC,
General Partner

By: Keith Feuilly
Atlas Machine Rental, LLC
Keith Feuilly, President

STATE OF MARYLAND, _____ COUNTY, to-wit:

I HEREBY CERTIFY that on this 21st day of October, 2014, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared known or proven to me to be the person whose name is subscribed to the foregoing document and who acknowledged that he executed the same for the purposes therein contained as his act and deed, with full authority to do so.

WITNESS my hand and Official Notarial Seal.

My Commission Expires:

3/16/2018

Jason T. Miller
Notary Public
Resident of Washington Co., MD

STATE OF MARYLAND, WASHINGTON COUNTY, to-wit:

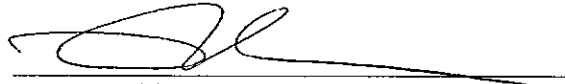
I HEREBY CERTIFY that on this 17 day of Oct, 2014, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Keith Feuilly,, President of Atlas Machine Rental, LLC, sole member of Hagerstown Commodities, LLC, General Partner of Partners Marketing, LLP known or proven to me to be the person whose name are subscribed to the foregoing document and who acknowledged that he executed the same for the purposes therein contained as its act and deed, with full authority to do so.

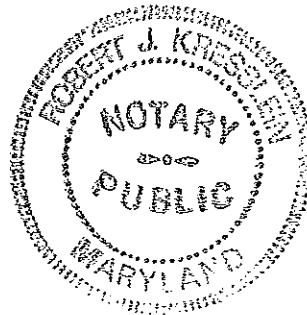
WITNESS my hand and Official Notarial Seal.

My Commission Expires:

1/2/19

Resident of Fredville Co., MD


Notary Public



PERFORMANCE/SURETY BOND

1 of 3

CITY OF HAGERSTOWN, MARYLAND

CONTRACT NO. _____ Date of Contract _____

Partners Marketing LLP, 500 Eastern Blvd South, Hagerstown MD 21740

PRINCIPAL (Insert Contractor's name, business address, zip code)
Companion Property and Casualty Insurance Company

PO Box 100165, Columbia, SC 29202

SURETY (Insert Surety name, business address, zip code)

This Surety is a corporation of the State of South Carolina and authorized to do business in the State of Maryland.

OBLIGEE is the CITY OF HAGERSTOWN, MARYLAND by and through the DEPARTMENT OF PARKS AND ENGINEERING.

Eight Hundred and Fifty Thousand and 00/100 Dollars (\$850,000.00)

Penal Sum of Bond (if spelled in words and in figures)

Bond Number DSG0001168

Date Bond Executed October 9, 2014

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligor named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is comprised of corporations acting as co-sureties, we the co-sureties bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above in words and figures, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the City of Hagerstown by and through the Department of Parks and Engineering acting for the City of Hagerstown, which contract is described and dated as shown above, and incorporated herein by reference. The contract, and all things incorporated into the contract, together with any and all changes, extensions of time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the plans, specifications and Special Provisions, or any of them, or to any other documents incorporated into the contract shall hereinafter be referred to as the "Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

NOW, THEREFORE, during the original term of said Contract, during any extensions thereto that may be granted by the Department of Engineering and Code Administration, and during the guarantee and warranty period required under the Contract, unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are met:

1. Principal shall well and truly perform the Contract; and
2. Principal and Surety shall comply with the terms and conditions in this Performance Bond.

Whenever Principal shall be declared by the City of Hagerstown to be in default under the Contract, the Surety may, within 30 days after notice of default from the City of Hagerstown, notify the City of Hagerstown of its intention to either promptly proceed to remedy the default or promptly proceed to complete the project in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the City of Hagerstown thereupon shall have the remaining Contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications comprising the same shall in any way affect its obligation on this Performance Bond, and it does hereby advise notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

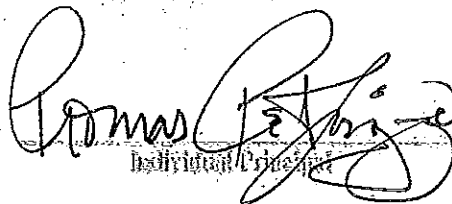
This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below his or her title as a sole proprietor. If any partnership or joint venture is a signatory under the Principal heading below, then all members of such such partnership or joint venture, and each member has set forth below his or her title as a general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below; a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such person, and each such duly authorized representative to sign below and set forth below his or her title as a representative of the corporation. If any individual is a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Day of August 1991.

In Presence of:

Keith Feunly
Witness

OR BY



(SEAL)

Individual Principal

In Witness of

Witness	as to	Partners Marketing LLP	(SEAL)
FRED LUNA	as to	Co-Partnership Principal - Name of Co-Partnership	(SEAL)
Keith Feunilly	as to	By: <i>[Signature]</i>	(SEAL)
Keith Feunilly	as to	By: Thomas <i>[Signature]</i>	(SEAL)
Keith Feunilly	as to	By: FRED LUNA	(SEAL)

Corporate Principal (Name of Corporation)

Attest:

Keith Feunilly
Corporate Secretary

as to

By:

President

AFFIX
CORPORATE
SEAL

Companion Property and Casualty Insurance Company

Surety

PO Box 100165, Columbia, SC 29202

Business Address of Surety

Attest:

(SEAL)

By:

Philip S. Tobey

Attorney-in-Fact

[Signature]
Signature

AFFIX
CORPORATE
SEAL

Claudia Pereira, Dale Group, Inc.
Local Bonding Agent's Name:

Local Bonding Agent's Business Address: PO Box 6, Florham Park, NJ 07932

COMPANION PROPERTY AND CASUALTY INSURANCE COMPANY

P.O. Box 100165 (29202)
51 Clemson Road
Columbia, SC 29229

GENERAL POWER OF ATTORNEY

Know all men by these Presents, that COMPANION PROPERTY AND CASUALTY INSURANCE COMPANY ("Companion") had made, constituted and appointed, and by these presents does make, constitute and appoint Philip S. Tobey of Florham Park, NJ, Lionel D. Jorge of Florham Park, NJ, Jeffrey R. Bauman of Florham Park, NJ, Charles T. Cohen of Bensalem, PA and Megan Bauer of Florham Park, NJ EACH as its true and lawful attorney for it and its name, place and stead to execute on behalf of the said company, as surety, bonds, undertakings and contracts of suretyship to be given to all obligees provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount of the sum of \$3,000,000 (Three Million Dollars) including but not limited to consents of surety for the release of retained percentages and/or final estimates on construction contracts or similar authority and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of the presents, shall be binding upon the Company as if they had been duly signed by the president and attested by any officer of the company in their own proper persons.

In Witness Whereof, the COMPANION PROPERTY AND CASUALTY INSURANCE COMPANY has caused its official seal to be hereto affixed, and these presents to be signed by its President and attested by its Vice President and Chief Underwriting Officer this 26th day of August, 2014.

Attest:

COMPANION PROPERTY AND CASUALTY
INSURANCE COMPANY

By:

George P. Reeth, Jr. President

Ron Carlson, VP and Chief Operating Officer

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

On this 26th day of August, 2014 before me personally came George P. Reeth, Jr., to me known, who being by me duly sworn, did depose and say that he resides in Columbia, in the County of Richland, State of SC, at Columbia; that he is the President of COMPANION PROPERTY AND CASUALTY INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed and that he signed his name thereto pursuant to due authorization.

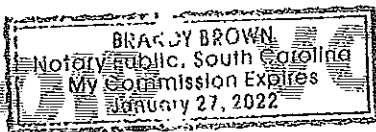
Notary Public, State of SC, Qualified in Richland County Commission Expires: 1/27/22

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

I, the undersigned an Officer of COMPANION PROPERTY AND CASUALTY INSURANCE COMPANY, a South Carolina Corporation, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and, furthermore, that the Resolution of the Executive Committee of the Board of Directors set forth in the Power of Attorney is now in force.

Signed and sealed at the City of Columbia, Dated the 26th day of October, 2014

George P. Reeth, Jr. President



SURETY DISCLOSURE STATEMENT AND CERTIFICATION

Companion Property & Casualty Insurance Company, surety on the attached bond, hereby certifies the following:

(1) The surety meets the applicable capital and surplus requirements of R.S.17:17-6 or R.S.17:17-7 as of the surety's most current annual filing with the New Jersey Department of Insurance.

(2) The capital and surplus, as determined in accordance with the applicable laws of this State, of the surety participating in the issuance of the attached bond is in the following amount as of March 26, 2012, which amounts have been certified as indicated by certified public accountants Deloitte & Touche LLP, and will be included in the Annual Statement to be filed with the New Jersey Department of Insurance, 20 West State Street CN-325, Trenton, New Jersey 08625-0325

Capital and Surplus: **\$196,924,934**

(3) (a) With respect to each surety participating in the issuance of the attached bond that has received from the United States Secretary of the Treasury a certificate of authority pursuant to 31 U.S.C. § 9305, the underwriting limitation established therein and the date as of which that limitation was effective is as follows:

Limitation: **\$19,692,000**

(b) With respect to each surety participating in the issuance of the attached bond that has not received such a certificate of authority from the United States Secretary of the Treasury, the underwriting limitation of that surety as established pursuant to R.S.17:18-9 as of (date on which such limitation was so established) is as follows (indicating for each such surety that surety's underwriting limitation and the date on which that limitation was established):

(4) The amount of the bond to which this statement and certification is attached is \$ \$850,000.00

(5) If, by virtue of one or more contracts of reinsurance, the amount of the bond indicated under item (4) above exceeds the total underwriting limitation of all sureties on the bond as set forth in items (3)(a) or (3)(b) above, or both, then for each such contract of reinsurance:

(a) The name and address of each such reinsurer under that contract and the amount of that reinsurer's participation in the contract is as follows:

N/A - No external reinsurance providers are enlisted

(b) Each surety that is party to any such contract of reinsurance certifies that each reinsurer listed under item (5)(a) satisfies the credit for reinsurance requirement established under P.L.1993, c. 243 (C.17:51B-1 et seq.) and any applicable regulations in effect as of the date on which the bond to which this statement and certification is attached shall have been filed with the appropriate public agency.

CERTIFICATE

I Philip S Tobey, as Attorney-in-Fact for *Companion Property and Casualty Insurance Company*, a corporation/mutual insurance company/other (indicating type of business organization) (circle one) domiciled in _____ DO HEREBY CERTIFY that, to the best of my knowledge, the foregoing statements made by me are true, and ACKNOWLEDGE that, if any of those statements are false, this bond is VOIDABLE.

(Signature of certifying agent)

Philip S. Tobey
(Printed name of certifying agent)

Attorney-in-fact
(Title of certifying agent)

Companion Property & Casualty Insurance Company

NAIC Company Code: 12157

NAIC Group Code: 661

Statutory Financial Statement Summary As of December 31, 2013

<u>Assets</u>		<u>Liabilities</u>	
Bonds:	\$ 528,532,330	Reserves for:	
Stocks:	\$ 122,444,541	a) Losses & LAE:	\$ 313,330,911
Cash & Short-term Investments:	\$ 198,051,156	b) Unearned Premiums:	\$ 118,554,514
Uncollected Premium & Agents Balance in Course of Collection:	\$ 31,342,643	c) Tax, Licenses & Fees:	\$ 21,332,681
Deferred Premiums & Commissions Not Yet Due:	\$ 29,374,082	Reinsurance Payables:	\$ 279,831,327
Funds Held by, Due from Reinsured Companies:	\$ 6,980,063	Payables to Parents, Subsidiaries, Affiliates:	\$ 3,537,329
<u>Other Assets:</u>		Advanced Premiums:	\$ 20,577
Other Invested Assets:	\$ 9,013,872	Other Liabilities:	\$ 11,051,704
Notes Received:	\$ -	Remittances & Items not Allocated:	\$ 74,357
Current Federal & Foreign Income Tax Recoverable:	\$ 12,497,086	Total Liabilities:	\$ 747,733,400
Investment Income Due & Accrued:	\$ 3,956,309		
Net Deferred Tax Asset:	\$ 19,638,551	Policyholder Surplus	
Guaranty Funds Receivable or On Deposit:	\$ 1,107,341	Common Stock:	\$ 4,200,000
Electronic Data Processing Equipment:	\$ -	Gross Paid-in & Contributed Surplus:	\$ 232,369,422
Recoverables from Parent, Subsidiaries:	\$ 3,204,676	Unassigned Funds:	\$ 14,268,313
Aggregate Write-ins for Other than Invested Assets:	\$ 31,428,485	Total Policyholder Surplus:	\$ 250,837,735
Total NET Admitted Assets:	\$ 998,571,135	Total Liabilities & Policyholder Surplus:	\$ 998,571,135

NOTES: Bonds & Stocks are valued in accordance with the basis adopted by the NAIC.

CERTIFICATION:

The Officers of this reporting entity being duly sworn, each depose and say that they are the described officers of said reporting entity, and that on the reporting period stated above, all herein described assets were the absolute property of the said reporting entity, free and clear from any liens or claims thereon, except as herein stated, and that this statement, together with related exhibits, schedules and explanations therein contained, annexed or referred to, is a full and true statement of all assets and liabilities and of the condition and affairs of the said reporting entity as of the reporting period stated above, and of its income and deductions therefrom for the period ended and have been completed in accordance with the NAIC Annual Statement Instructions and Accounting Practices and Procedures Manual except that 1) State Law may differ, or 2) that State rules or regulations require differences in reporting not related to accounting practices and procedures according to the best of their information, knowledge and belief, respectively.

NOTARIZED:

State of South Carolina
County of Richland
on 1st day of April, 2014
My commission Expires July 25, 2015

George Reeth, Jr. President
Jennifer Thorne, VP & CFO

Prepared by: Kaitlin McGreevy

IRREVOCABLE POWER OF ATTORNEY

This Power of Attorney is made on September 30, 2014

Between:

the Principal, Atlas Equipment Rentals Corp. (Principal Indemnitor) whose address is 336 Barretto Street, Bronx, NY 10474 (Principal Address), Partners Marketing, L.P. (Principal Indemnitor) whose address is 500 Eastern Blvd, South, Hagerstown, MD 21740 (Principal Address), EC Commodities Corp. (Indemnitor) whose address is 111 Cherry Valley Avenue, Suite WPH6, Garden City, NY 11530 (Indemnitor Address) & B & G Restoration, Inc. (Indemnitor) whose address is 227 Susquehanna Avenue, Lincoln Park, NJ 07030 (Indemnitor Address) and Keith Feully (Individual Indemnitor) whose address is 34 Madison Avenue, Rochelle Park, NJ 07662, (Individual Address) Thomas Petrizzo (Individual Indemnitor) whose address is 111 Cherry Valley Avenue, Suite WPH6, Garden City, NY 11530, (Individual Address) Fred & Gordana Luna (Individual Indemnitor) whose address is 227 Susquehanna Avenue, Lincoln Park, NJ 07030 (Individual Address) & George Rullo whose address is 23 Crandall Drive, East Brunswick, NJ 08816 (Individual Address)

(Individual Address) individually referred to as "I" or "my",

And the Surety,

Companion Property and Casualty Insurance Company, Companion Specialty Insurance Company, Bondex Insurance Company, any reinsurer, and/or any other person or entity which the Surety may procure to act as surety or co-surety on any Bond and/or any other person or entity who executes any Bond at its request as well as any successor(s) and/or assign(s) of any of the foregoing, referred to as "You".

Grant of Authority. I appoint You to act as my Agent (called an attorney in fact) to do each and every act which I could personally do for the following uses and purposes:

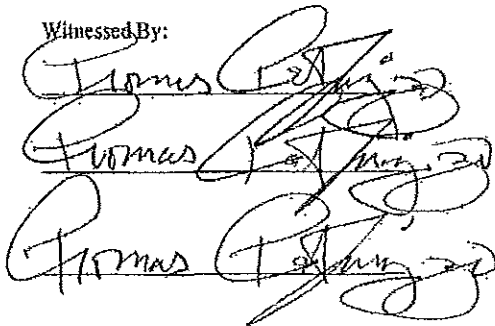
a. To exercise all of the rights assigned, transferred and set over to you, and to make, execute and deliver in my name any and all additional contracts, instruments, assignments, mortgages, releases, checks, drafts, notes, certificates of deposit, letters of credit, deeds, bills of sale, authorizations, documents or papers (including, but not limited to, those related to the disbursement of loan proceeds, the commencement of proceedings and/or the execution of instruments referred to above; the endorsement of checks or other instruments payable to any Principal representing payment of Obligation monies and/or execution of any insurance claims, requisitions and/or warranties) deemed necessary and/or proper by You in order to give full effect to the intent and meaning of the assignments or rights contained in a certain General Agreement of Indemnity I am simultaneously executing and/or have executed, and/or the full protection intended to be given to You under all other provisions of the General Agreement of Indemnity. Consistent therewith, since the General Agreement of Indemnity provides for Me to indemnify and/or exonerate You, I expressly agree to You executing in my name a Consent Judgment and/or, in all jurisdictions which recognize entry of a Confession of Judgment, a Confession of Judgment. The amount of the Consent Judgment and/or Confession of Judgment may equal the total of all claims under all Bonds (for these purposes, the amount of a claim under a performance bond shall equal the amount of the paid and/or projected cost to complete and/or the amount of any paid and/or anticipated settlement or payment) plus all incurred/paid and/or projected expenses, including but not limited to attorneys fees and consulting fees. The amount of said Consent Judgment and/or Confession of Judgment may be supplemented, either by amendment of the Consent Judgment/Confession of Judgment or by execution of a supplemental Consent Judgment/Confession of Judgment, each time that a further claim is received, a further payment is made and/or a further payment or expense is projected or incurred/paid.

b. To perform any other act on my behalf which You may consider necessary and/or helpful to enforce the terms and conditions and powers granted in the General Agreement of Indemnity.

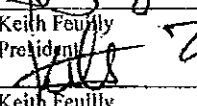
Powers. I give You all the power and authority which I may legally give to You. This Power of Attorney is coupled with an interest and I recognize that only You may revoke this Power of Attorney or appoint a new Agent in your place. I approve and confirm all that You and/or your substitute may lawfully do on my behalf and I release You and/or your substitute from any act(s) which You and/or your substitute take consistent herewith. This Power of Attorney is effective and remains in effect even if I become disabled.

Signatures. By signing below, I acknowledge that I have received a copy of this Power of Attorney and that I understand its terms.

Witnessed By:



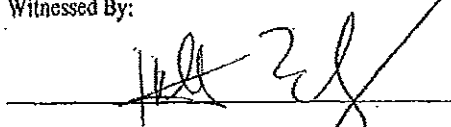
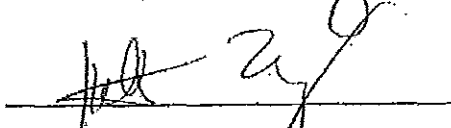
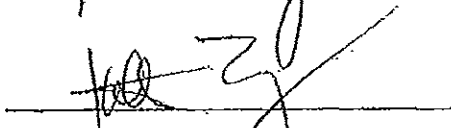

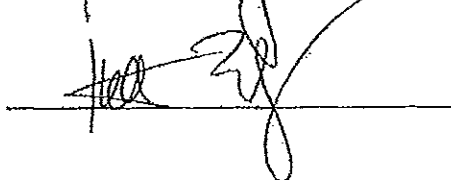

Name: Keith Feully
Title: President



Name: Keith Feully
Title: Managing member

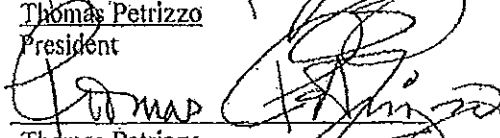

Name: Keith Feully
Title: Individually

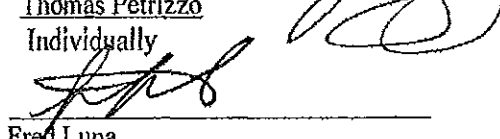
Signatures. By signing below, I acknowledge that I have received a copy of this Power of Attorney and that I understand its terms.

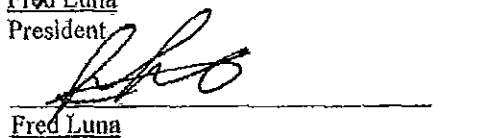
Witnessed By:

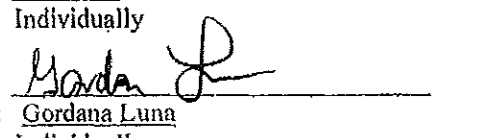







Name : Thomas Petrizzo
Title President


Name : Thomas Petrizzo
Title Individually


Name: Fred Luna
Title: President


Name: Fred Luna
Title Individually


Name : Gordana Luna
Title Individually

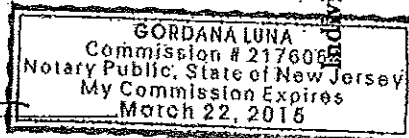
Name : George Rullo
Title Individually

STATE OF New Jersey COUNTY OF Morris SS.:

I CERTIFY that on 4th day of October, 2014 Keith Feully personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one person, each person):

- (a) was the maker of the attached document; and
- (b) executed, sealed and delivered this document as his or her act and deed.

Gordana Luna
Notary Public



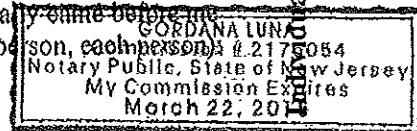
Individual

STATE OF New Jersey COUNTY OF Morris SS.:

I CERTIFY that on 4th day of October, 2014 Thomas Petrizzo personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one person, each person):

- (a) was the maker of the attached document; and
- (b) executed, sealed and delivered this document as his or her act and deed.

Gordana Luna
Notary Public



Individual

STATE OF NJ COUNTY OF Bergen SS.:

I CERTIFY that on 4th day of October, 2014, Fred & Gordana Luna personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one person, each person):

- (a) was the maker of the attached document; and
- (b) executed, sealed and delivered this document as his or her act and deed.

VON DAGUZMAN
Notary Public

A Notary Public of New Jersey

My Commission Expires January 29, 2016
SEP 27 2016

STATE OF _____ COUNTY OF _____ SS.:

I CERTIFY that on _____ day of _____, George Rullo personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one person, each person):

- (a) was the maker of the attached document; and
- (b) executed, sealed and delivered this document as his or her act and deed.

VON DAGUZMAN
Notary Public

A Notary Public of New Jersey

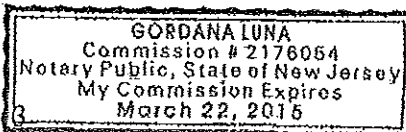
My Commission Expires January 29, 2016
SEP 27 2016

STATE OF New Jersey COUNTY OF Morris SS.:

I CERTIFY that on 4th day of October, 2014 Keith Feully came before me and this person acknowledged under oath, to my satisfaction, that:

- (a) this person signed, sealed and delivered the attached document as Managing Member of Partners Marketing, LP, a corporation of the State of MD, which is a manager of the limited liability company named in this document; and
- (b) this document was signed and delivered by the corporation as its voluntary act and deed as a manager on behalf of said limited liability company by virtue of authority from its Board of Directors.

Gordana Luna
Notary Public



Individual

Individual

LLC-Corporate Managers

STATE OF _____, COUNTY OF _____ SS.:

I CERTIFY that on _____ day of _____, _____, Thomas Petrizzo personally came before me and acknowledged under oath, to my satisfaction, that:

- (a) this person signed, sealed and delivered the attached document as President of EC Commodities Corp., a corporation of the State of NY, named in this document;
- (b) the proper corporate seal was affixed; and
- (c) this document was signed and delivered by the corporation as its voluntary act and deed by virtue of authority from its Board of Directors.

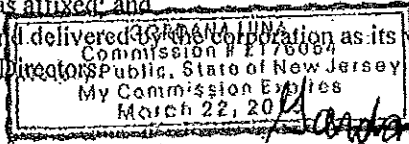
Notary Public

Corporation (simple)

STATE OF New Jersey, COUNTY OF Morris SS.:

I CERTIFY that on 4th day of October, 2014, Fred Luna personally came before me and acknowledged under oath, to my satisfaction, that:

- (a) this person signed, sealed and delivered the attached document as President of B & G Restoration, Inc., a corporation of the State of NJ, named in this document;
- (b) the proper corporate seal was affixed; and
- (c) this document was signed and delivered by the corporation as its voluntary act and deed by virtue of authority from its Board of Directors.



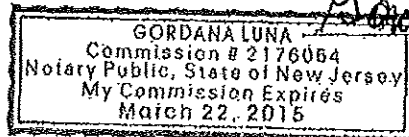
Notary Public

Corporation (simple)

STATE OF New Jersey, COUNTY OF Morris SS.:

I CERTIFY that on 4th day of October, 2014, Keith Feuilly personally came before me and acknowledged under oath, to my satisfaction, that:

- (a) this person signed, sealed and delivered the attached document as President of Atlas Equipment Rentals Corp., a corporation of the State of NY, named in this document;
- (b) the proper corporate seal was affixed; and
- (c) this document was signed and delivered by the corporation as its voluntary act and deed by virtue of authority from its Board of Directors.



Notary Public

Corporation (simple)