

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered on this ____ day of May, 2011 (the "Effective Date") by and between the Township of West Orange ("Township"), a municipal corporation of the State of New Jersey, Telgian Corporation (including its subsidiary, predecessor, and affiliated entities, including but not limited to Fire Materials Group, LLC, and TVA Fire & Life Safety, Inc), (collectively, "Telgian"), a fire protection and alarm system testing and inspection company with headquarters in Tempe, Arizona, and Sears Holdings Corporation ("Sears"), a retail corporation with headquarters in Hoffman Estates, Illinois (collectively, the "Parties"). No other parties, except the foregoing named entities, shall be deemed subject to the terms of this Agreement.

RECITALS

WHEREAS, Kruvant Associates ("Kruvant") is the owner of a shopping center known as "West Orange Plaza," located at 235 Prospect Ave., West Orange, New Jersey (the "Property"); and

WHEREAS, Sears, through its subsidiary Kmart Corporation ("Kmart"), leases certain premises at the Property from Kruvant (the "Premises" or "Kmart -related Stores"); and

WHEREAS, Telgian has contracted with Sears and Kmart to provide, among other things, fire sprinkler and alarm inspection services at various Sears and Kmart locations, including the Premises; and

WHEREAS, on August 29, 2010, a fire was reported inside the Dollar Tree store located at the Property (the "Fire"); and

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

WHEREAS, subsequent to the Fire, Township fire officials reviewed and inspected the fire safety equipment at the Property; and

WHEREAS, the Dollar Tree store and several other stores at the Property are linked

to one main fire protection system through, among other things, a series of standpipes and risers within the Kmart and Staples stores at the Property; and

WHEREAS, upon the Township fire officials' inspection of the Property subsequent to the Fire, and upon their review of a fire system inspection report prepared by Telgian on or about March 10, 2009, the Township issued six (6) Notices of Continuing Violation, Order to Pay Penalty and Abate Violations and seven (7) Notices of Order to Pay Daily Penalty and Abate Violations (collectively, the "Violations"), which were sent to Telgian by letter dated October 13, 2010; and

WHEREAS, the Township provided Sears with five (5) Notices of Violation and Orders to Pay Penalty relating to the Property (the "Sears Violations"), via hand delivery of same to a Kmart store manager; and

WHEREAS, the Township cited Telgian and Sears for alleged violations of the New Jersey Uniform Fire Code, specifically N.J.A.C. 5:70-2.12(b)9(i), for the filing with the Township of allegedly false statements of Telgian's prior inspection, and N.J.A.C. 5:70-3.907.15 for failure to properly maintain the fire safety system within and around the Dollar Tree store and adjacent stores at the Property; and

WHEREAS, Telgian has formally disputed and appealed the Violations to the Township's Construction Board of Appeals, by way of applications dated October 29, 2010; and

WHEREAS, Sears has denied liability for the Sears Violations; and

WHEREAS, the Parties seek to settle, compromise, resolve amicably and discontinue the disputes between themselves without further litigation, and to avoid the expense, inconvenience, distraction and risks of litigation, without the Parties admitting any liability; and

WHEREAS, the Agreement's purpose is to resolve all past and present disputes among the Parties that involve, arise from or relate to the Violations and/or Sears Violations

and/or Fire;

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

1. **Settlement Amount.**

(A) Telgian and Sears shall pay, all in accordance with Subparagraph B of this Paragraph 1, the aggregate amount of Seventy-Five Thousand (\$75,000.00) Dollars.

(B) In consideration of the releases and other terms and conditions as set forth in this Agreement, within fourteen (14) days following execution of this Agreement by all Parties, each of the Parties shall make payment to the Township in the individual amounts set forth on the attached Exhibit A (hereinafter the "Individual Settlement Amount"). Payments of the Individual Settlement Amount may be made via certified check, wire, attorney trust account check, money order and/or official bank check, made payable to "Township of West Orange," to be delivered to the Township of West Orange c/o Richard D. Trenk, Esq., Trenk, DiPasquale, Webster, Della Fera & Sodono, P.C., 347 Mt. Pleasant Avenue, Suite 300, West Orange, New Jersey 07052, **TIME BEING OF THE ESSENCE.**

2. **Mutual Release.** The Parties have agreed to fully and finally compromise and settle, for good and valuable consideration, the controversies and disputes between them as asserted or which could have been asserted directly or indirectly solely in connection with the Violations and/or Sears Violations. In exchange for the Parties' dismissal of all currently pending claims, all claims that could have been brought to date, and/or future claims arising out of the Fire, which accrued prior to the date of this Agreement, and the consideration provided for under this Agreement, the Parties agree to mutually release and give up any and all claims and rights which they have or may have against each other, whether known or

unknown. This release shall preclude and prohibit the Township from issuing any further notices of violations or orders to pay in connection with the Fire to the Parties and/or Kruvant and/or sub-tenants of Sears, or associated third-parties thereof, who lease or otherwise occupy the Premises and/or the Kmart-related Stores.

(a) The Parties hereby knowingly and voluntarily release and forever discharge the other Parties, for itself, successors, and assigns and each of its officers, directors, managers, members, shareholders, subsidiaries and affiliates, and hereby further release, remise and forever discharge the other Parties and their respective predecessors, successors, assigns, managers, shareholders, representatives, parent corporations, subsidiaries, affiliates, agents, servants, employees, attorneys, consultants, officers, directors, each in their corporate and individual capacities, from any and all claims or causes of action, counterclaims and cross-claims arising out of or in any way related to the Violations and/or Sears Violations as set forth in this Agreement.

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

(c) Without limiting the generality of the foregoing set forth above, the Parties and each of their officers, directors, managers, members, shareholders, subsidiaries and affiliates, hereby further release, remise and forever discharge the other Parties and their

respective predecessors, successors, assigns, managers, shareholders, representatives, parent corporations, subsidiaries, affiliates, agents, servants, employees, attorneys, consultants, officers, directors, each in their corporate and individual capacities, from any and all claims or causes of action arising out of or in any way related to the Violations and/or Sears Violations issued to Telgian and Sears by the Township solely in connection with the Fire at the Property.

(d) No other parties, except Telgian, Sears, the Kmart-related Stores and the Township, shall be deemed subject to the terms of this Agreement. This Agreement shall be deemed to apply only to Telgian and Sears and the Violations and/or Sears Violations issued to them. This Agreement shall not operate so as to release any other party, entity or individual which has previously or may in the future receive Notices of Violation and Orders to Pay Penalty in connection with and arising out of the Fire at the Property.

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

3. Withdrawal of Violations.

(A) Upon receipt of the Individual Settlement Amount from Telgian, as set forth in Paragraph 1 above, the Township shall withdraw the Violations, with prejudice and without costs, and cease prosecution of same.

(B) Upon receipt of the Individual Settlement Amount from Sears, as set forth in Paragraph 1 above, the Township shall withdraw the Sears Violations, with prejudice and without costs, and cease prosecution of same.

4. **Dismissal of Appeals.** Upon the Township's withdrawal of the Violations as set forth in Paragraph 3(A) above, Telgian shall withdraw, with prejudice and without costs, its appeals of the Violations currently pending before the West Orange Construction Board of Appeals.

5. **Covenant Not to Sue.**

(A) The Parties represent and agree that, with the sole exception of enforcing this Agreement, they shall not file any lawsuits against another Party, and their respective predecessors, successors, assigns, managers, shareholders, representatives, parent corporations, subsidiaries, affiliates, agents, servants, employees, attorneys, consultants, officers, directors, each in their corporate and individual capacities, in any court or administrative tribunal, or file or cause to be filed any charges or complaints against the Parties with any municipal, state or federal agency charged with the enforcement of any law or regulation based on the Violations and/or Sears Violations and/or Fire.

(B) The Township agrees that it will not sue or file a charge, complaint, grievance or demand for arbitration against Telgian and/or Sears and their respective predecessors, successors, assigns, representatives, parent corporations, subsidiaries, affiliates, agents, servants, employees, attorneys, consultants, officers, directors, each in their corporate and individual capacities, in any forum or assist or otherwise participate willingly or voluntarily in any claim, arbitration, suit, action, investigation or other proceeding of any kind which relates to the Fire, unless required to enforce this Agreement.

(C) Telgian and Sears agree that they will not sue or file a charge, complaint, grievance or demand for arbitration against the Township and its respective predecessors, successors, assigns, managers, shareholders, representatives, parent corporations, subsidiaries, affiliates, agents, servants, employees, attorneys, consultants, officers, directors, each in their corporate and individual capacities, in any forum or assist or otherwise participate willingly or voluntarily in any claim, arbitration, suit, action, investigation

or other proceeding of any kind which relates to any matter that involves any relationship between the Township, Telgian and Sears, and that occurred up to and including the date of this Agreement, unless required to enforce this Agreement.

6. **Attorneys' Fees and Costs.** The Parties recognize that the Settlement Amount shall be paid to the Township in full satisfaction of the claims relating to the Fire and/or Violations and/or Sears Violations and each party hereto shall bear its own costs and attorneys' fees in connection therewith.

7. **Condition Subsequent.** The Township Council shall pass a resolution authorizing the Settlement of the Violations and Sears Violations in accordance with the terms and conditions of this Agreement and authorizing the Township's Mayor to execute and deliver this Agreement, along with any other documents that need to be executed and delivered in conformance with this Agreement. To the extent that the Township Council does not adopt such a resolution, all parties' rights, remedies and defenses are fully preserved and nothing contained herein shall be admissible for any purpose.

8. **Confidentiality.** For and in consideration of the Agreement being executed, and, in furtherance of the settlement of the Violations and Sears Violations, the Parties agree: (i) that neither the Township, Telgian nor Sears, nor any Party's agents, will disclose the terms, conditions, or existence of this Agreement to any person or entity except to the Parties' attorneys or financial advisors or if required in response to a subpoena or order from a court of law or administrative agency or tribunal, or as required under State law or administrative regulation, including but not limited to any requirement that the within Agreement and its terms be approved by any governmental entity including the Township Council of the Township of West Orange or subject to the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.; and (ii) that neither the Parties nor their agents will disparage another Party or any of another Party's respective heirs, executors, administrators, successors and assigns. The Parties further agree that the Parties will advise any individual

to whom the terms, conditions or existence of this Agreement have been disclosed by another Party, of the confidentiality requirements of this Paragraph 8 and that such persons shall not disclose any such information to any person.

9. **Denial of Liability.** Neither the execution nor delivery of nor payment under this Agreement shall be construed at any time or place to be an admission or concession of liability, responsibility and/or wrongdoing by any Party to this Agreement or of violation of any state, local or federal law by the Parties, and that this Agreement is solely for the purpose of amicably adjusting and resolving all matters in dispute among the Parties. The Parties deny any liability and have agreed to settle this matter and to pay the amount referred to herein solely to avoid the burden, expense, delay and uncertainties of the appeals process with respect to the Township's Construction Board of Appeals and related litigation and to buy their peace. Telgian and Sears acknowledge the applicability of the New Jersey Uniform Fire Safety Act and the New Jersey Uniform Fire Code with respect to this matter, but disclaim and deny liability in connection with the Fire and events preceding that incident. No Party purports to be the prevailing party in any threatened or pending proceeding, administrative or otherwise. Each Party acknowledges and agrees that all allegations remain disputed, inconclusive and denied. Nothing contained herein may be used or viewed as an admission of wrongdoing or liability.

(A) This Settlement Agreement is the product of informed negotiations involving compromises of the Parties' previous stated legal positions, and does not reflect the Parties' views as to their rights and obligations with regard to matters or persons outside the scope of this Agreement.

(B) As represented and warranted herein, this Agreement has been reviewed by legal counsel for the Parties prior to its execution and no Party shall be entitled to have any language of this Agreement construed against any other Party in the event of any dispute between them relating to this Agreement whether based upon the identity of the drafter or

any other basis.

(c) The Parties have consulted with their respective attorneys regarding the terms and conditions of this Agreement, have carefully read this Agreement, and known and understand the contents hereof. The Parties expressly acknowledge and agree that they are entering into this Agreement voluntarily and have not been threatened, coerced or intimidated in any way or pressured into entering into this Agreement.

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

11. **Integration Clause.** The Parties acknowledge that this Agreement is intended to replace any and all existing agreements, whether written or oral, between the Parties, except for any existing contracts between Telgian and Sears unrelated to the Violations and/or Sears Violations and/or Fire, and upon execution hereof, all prior agreements or representations shall therefore become merged and extinguished, except as otherwise provided herein. This Agreement constitutes the complete agreement and understanding between the Parties regarding the Violations and/or Sears Violations, and appeals thereof. No amendment, modification or addendum to this Agreement shall be effective unless in writing dated subsequent to the Effective Date hereof and executed by the duly authorized representatives of the Parties. The requirement for such writing shall apply to any waiver of the requirement of a written modification pursuant to this Paragraph and this shall be deemed an essential term of the Agreement. The Parties acknowledge that no representative of the Parties has made any representation or promise concerning the terms or conditions of this Agreement, other than those expressly set forth in this Agreement.

12. **No Third-Party Beneficiaries.** This Agreement is intended to confer rights and benefits only on the Parties, their successors, heirs and assigns. Except for such rights

and benefits conferred upon the Parties, their successors, heirs and assigns, nothing in this Agreement is intended to give nor shall it give to any other person or entity any third-party beneficiary rights or any rights or ability to recover from the Parties and/or to collect against the Parties.

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

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

15. **Binding Effect.** The Parties and their respective agents are bound by this Agreement. Anyone who succeeds to the Parties' rights and responsibilities are also bound. This Agreement is made for the Parties' mutual benefit and all who succeed to the Parties' rights and responsibilities.

16. **Signatures.** The Parties confirm that they understand and agree to the terms of this Agreement. By signing this Agreement, the Parties acknowledge that they have carefully read it, understand it, and are aware that they are giving up rights with respect to the matters described herein. By signing this Agreement, the Parties acknowledge that they have been provided sufficient opportunity to consult with legal counsel of their own choosing regarding the terms of the Agreement and regarding the rights that they are relinquishing thereunder. The Parties sign this Agreement freely, voluntarily, and with knowledge of the terms and the rights they are relinquishing. The Parties confirm that they have not been

threatened, coerced, or intimidated into entering this Agreement. This Agreement may be executed in counterparts and electronic or facsimile signatures of this Agreement shall have the same force and effect as the original thereof.

17. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the substantive and procedural laws of the State of New Jersey without reference to principles of conflicts of laws.

18. **Not Evidentiary.** Neither this Agreement nor its terms or provisions herein are evidentiary or admissions between the Parties to this Agreement and may not be utilized as evidence or offered into evidence, produced in discovery, or otherwise used in any action, and/or other proceeding between the Parties, except in an action, litigation, and/or other proceeding to enforce or defend the Agreement's terms.

19. **Headings.** The headings to paragraphs of this Agreement are provided solely for the convenience of the Parties. They do not constitute and shall not be construed to constitute part of this Agreement and shall not be used as an aid in the interpretation of the Agreement or the contracting intent of the Parties.

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

TOWNSHIP OF WEST ORANGE

By: _____
Honorable Robert Parisi,
Mayor

STATE OF NEW JERSEY)
)
COUNTY OF _____) ss:.

I CERTIFY that on _____, 2011 _____ personally came before me and acknowledged under oath, to my satisfaction, that he (a) executed the attached Agreement as the _____ of the Township of West Orange; (b) is authorized to execute the attached Agreement on behalf of the Township; and (c) executed the attached Agreement, as the act of the Township.

Notary Public of the State of New Jersey

TELGIAN CORPORATION

By: _____
J. Randall Walti, Esq.
General Counsel, Telgian

STATE OF _____)
)
COUNTY OF _____) ss:.

I CERTIFY that on _____, 2011 _____ personally came before me and acknowledged under oath, to my satisfaction, that he (a) executed the attached Agreement as the _____ of Telgian Corporation; (b) is authorized to execute the attached Agreement on behalf of such corporation; and (c) executed the attached Agreement, as the act of such corporation.

Notary Public of the State of _____

SEARS HOLDINGS CORPORATION

By: _____
William McCormick, Esq.
Senior Counsel, Sears

STATE OF _____)
)
COUNTY OF _____) SS:..

I CERTIFY that on _____, 2011
 _____ personally came before me and acknowledged under oath, to my satisfaction, that he (a) executed the attached Agreement as the _____ of Sears Holding Corporation; (b) is authorized to execute the attached Agreement on behalf of such corporation; and (c) executed the attached Agreement, as the act of such corporation.

Notary Public of the State of _____

EXHIBIT A
Parties and Their Individual Settlement Amounts

- | | |
|--|--------------|
| 1. Telgian Corporation, including its
Subsidiary, predecessor, and affiliated
Entities, including but not limited to
Fire Materials Group, LLC, and TVA
Fire & Life Safety, Inc. | \$ 55,000.00 |
| 2. Sears Holdings Company | \$ 20,000.00 |