

SETTLEMENT AGREEMENT

WHEREAS, in 2006, Aurora Contractors, Inc. ("Aurora") filed suit against Sachem Central School District ("Sachem") in the Supreme Court of the State of New York, County of Suffolk, Index No. 21012/06, Justice Elizabeth H. Emerson, Assigned Justice ("Pending Litigation") to recover not less than \$2,093,958.58 for certain base contract, change order, impact, delay, loss of productivity and other damages with respect to work and services Aurora performed for Sachem involving a construction of the new high school and related work known as Sachem East High School located at 177 Granny Road, Farmingville, New York 11738 ("Project"); and

WHEREAS, Sachem appeared in the lawsuit by serving and filing a Verified Answer denying Aurora's allegations and asserting a counterclaim seeking to recover \$1,000,000 for the costs associated with the furnishing of temporary heat; and

WHEREAS, Aurora served and filed a Reply denying any responsibility for temporary heat; and

WHEREAS, thereafter, Sachem served a Second Amended Answer asserting additional counterclaims against Aurora to recover money damages arising out of alleged water and related damage to the roofs and other property damage to certain high school buildings ("Sachem's Roof Damage Claims"); and

WHEREAS, at the same time, Sachem served a Third-Party Complaint upon John's Manville ("Manville") to recover money damages arising out of alleged water and related damage to the roofs and other property damage to certain high school buildings; and

WHEREAS, Aurora and Manville responded to Sachem's Roof Damage Claims by

denying any responsibility or liability in connection therewith; and

WHEREAS, both Aurora and Manville asserted various claims against one another seeking indemnity/contribution/breach of contract in connection with Sachem's Roof Damage Claims; and

WHEREAS, Sachem served a Third Amended Answer asserting property damage claims against Aurora association alleging water damage inside the parapet and other walls of the high school ("Wall Claims"); and

WHEREAS, Aurora responded by denying any responsibility for such damage; and

WHEREAS, thereafter, Aurora, as a fourth-party plaintiff, filed suit against several of its subcontractors on the Project, namely, Giaquinto Masonry Inc., Restor Technologies Inc., HST Roofing, Inc., Cord Contracting Co. Inc., Inter County Glass Inc. and Vipa Restoration Inc., as fourth-party defendants (collectively referred to as "Subcontractors"), seeking indemnity/contribution/breach of contract in the event Sachem were to prevail on any of Sachem's Roof or Wall Damage Claims in the lawsuit; and

WHEREAS, to date some of the Subcontractors have appeared in the lawsuit by filing answers denying any liability to Aurora; and

WHEREAS, the caption of the Pending Litigation is presently constituted as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
AURORA CONTRACTORS, INC.,

Index No. 21012/06

Plaintiff,

-against-

SACHEM CENTRAL SCHOOL DISTRICT,

Defendant

-----X
SACHEM CENTRAL SCHOOL DISTRICT,

Third-Party Plaintiff,

-against-

JOHNS MANVILLE,

Third-Party Defendant.

-----X
AURORA CONTRACTORS, INC.,

Fourth-Party Index No. 300057/10

Fourth-Party Plaintiff,

-against-

GIAQUINTO MASONRY INC., RESTOR
TECHNOLOGIES INC., HST ROOFING, INC.,
CORD CONTRACTING CO. INC., INTER COUNTY
GLASS INC. and VIPA RESTORATION INC.,

Fourth-Party Defendants.

-----X

and;

WHEREAS, Aurora was defended with respect to Schem's Roof Damage Claims and
Wall Claims in the Pending Litigation by its three insurance carriers, to wit, Travelers Insurance,
QBE Insurance and Virginia Surety; and

WHEREAS, in connection with said claims and counterclaims, Aurora placed three of its insurance carriers, on notice of the claims, to wit: Travelers Insurance, Virginia Surety, and QBE Insurance; and

WHEREAS, Aurora and its carriers acknowledge that Sachem was not a party to the notice given to said insurance carriers, the contents of said notice, and/or the veracity of the information set forth therein; and

WHEREAS, Aurora and Sachem desire to enter into a global settlement as between them resolving all and any claims as between them arising out of or in connection with the Project, it is hereby agreed as follows:

1. The foregoing recitals are incorporated herein by reference.
2. In full settlement of all of the claims and counterclaims asserted by both Aurora and Sachem in the Pending Litigation, Aurora shall receive \$400,000 payable as follows:
 - (i) Simultaneous with the execution of this Settlement Agreement, Sachem shall pay to Aurora the lump sum of \$100,000;
 - (ii) Travelers Insurance shall remit the sum of \$100,000 made payable to Sachem's attorneys, as escrowee. Upon clearance, Sachem's attorneys shall issue a check in the sum of \$100,000 to Aurora and delivery the check either to Aurora or Aurora's attorneys.
 - (iii) Virginia Surety shall remit the sum of \$100,000 made payable to Sachem's attorneys, as escrowee. Upon clearance, Sachem's attorneys shall issue a check in the sum of \$100,000 to Aurora and delivery the check either to Aurora or Aurora's attorneys.
 - (iv) QBE Insurance shall pay to Aurora the lump sum of \$100,000.
3. Aurora and Sachem will execute and deliver to one another the general

releases annexed hereto as Exhibit "A". Sachem shall deliver its general release upon execution of this Settlement Agreement and Aurora shall deliver its general release once the \$100,000.00 payment referred to in paragraph 2(i) above clears proper banking channels.

4. Sachem shall indemnify and hold Aurora harmless from any and all claims (including reasonable attorneys' fees) made by anyone involving the Project, including, but not limited to, any of the parties named in the Pending Litigation, plus all of Sachem's agents, representatives, architects, engineers, construction managers and consultants on the Project. Omitted from Sachem's indemnity obligation are claims, if any, of Aurora's subcontractors or suppliers that they were not fully paid for work performed or materials furnished at the Project.

5. Aurora assigns to Sachem all of its rights and claims against all of Aurora's subcontractors on the Project, including those named as fourth-party defendants herein, and architects, engineers, construction managers and consultants on the Project. Annexed hereto as Exhibit "B" is a formal written assignment.

6. Throughout the pendency of the Pending Litigation, Aurora agrees to cooperate with Sachem by communicating its knowledge of what occurred on the Project and to the extent necessary to assist Sachem's counsel in responding to discovery demands. Aurora shall also furnish Sachem's counsel access to Aurora's Project files. Aurora also agrees to cooperate by communicating to Sachem its knowledge of what occurred on the Project that may relate to the issues involved in a separate lawsuit captioned, *Board of Education of the Sachem Central School District v. Sammel Architecture, P.L.L.C., Damiano Barile Engineers, P.C., et al.*, Index No. 22586/04.

7. Once Sachem's \$100,000 check clears proper banking channels, either party may file with the court the "Stipulation of Discontinuance with Prejudice" annexed hereto as Exhibit "C".

8. The parties agree that neither Sachem's \$100,000.00 settlement payment nor the compromise of any party's claim(s) shall be construed as an admission of liability or fault on the part of either Sachem or Aurora.

9. The parties agree that the terms of this Settlement Agreement shall be treated as confidential except as required by law and/or a court order.

10. This Settlement Agreement sets forth and constitutes the entire agreement between the parties with respect to its subject matter and supersedes any and all prior agreements, understandings, promises, warranties, and representations made by each party to the other concerning their subject matter. This Settlement Agreement may be modified only by a written document signed by all parties. No waiver of this Settlement Agreement or any of its promises, obligations, terms, or conditions shall be valid unless it is written and signed by the party against whom the waiver is to be enforced.

11. This Settlement Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

12. This Settlement Agreement is binding on the parties and all related persons, partnerships, corporations, joint ventures, school boards or other related entities, their predecessors, successors, parents, subsidiaries, assigns, transferees, agents, directors, officers, employees and shareholders. Each of the signatories to this Settlement Agreement represents and

warrants that he is authorized to execute it on behalf of its respective party and, by his signature, to bind that party to this Settlement Agreement.

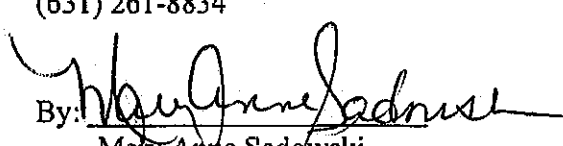
13. The parties acknowledge that they have consulted with legal counsel of their choosing before entering into this Settlement Agreement, have read it, know and understand its contents, and execute this Settlement Agreement freely and voluntarily. In executing and giving this Settlement Agreement, each party acknowledges that it has not relied on, or made to the other party or anyone purporting to act on its behalf, any promise or representation that is not in this agreement.

14. If any part or provision of this Settlement Agreement is finally to be determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts or provisions of this agreement.

15. This Settlement Agreement shall be governed by New York law.

INGERMAN SMITH, LLP
Attorneys for Defendant,
Sachem Central School District
150 Motor Parkway, Suite 400
Hauppauge, New York 11788
(631) 261-8834

By:


Mary Anne Sadowski

Dated: ~~September~~ , 2010

Nov 30

GOETZ FITZPATRICK, LLP
Attorneys for Plaintiff,
Aurora Contractors, Inc.
One Penn Plaza, Suite 4401
New York, New York, 10119
(212) 695-8100

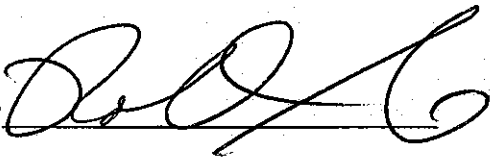
By:


Neal M. Eiseman

Dated: ~~September~~ , 2010

Nov. 29

SACHEM CENTRAL SCHOOL DISTRICT

By 

Dated: September , 2010

TRAVELERS INSURANCE

By _____

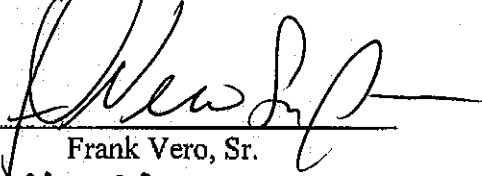
Dated: September , 2010

QBE INSURANCE

By _____

Dated: September , 2010

AURORA CONTRACTORS, INC.

By 

Frank Vero, Sr.

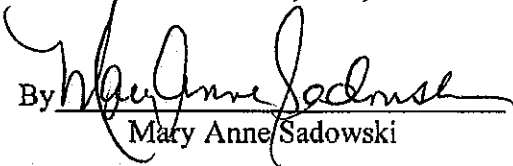
Dated: ~~September~~ **Nov. 23** , 2010

VIRGINIA SURETY

By _____

Dated: September , 2010

INGERMAN SMITH, LLP, as Escrowee

By 

Mary Anne Sadowski

Dated: ~~September~~ **Nov 30** , 2010

SACHEM CENTRAL SCHOOL DISTRICT

By 

Dated: September , 2010

TRAVELERS INSURANCE

By _____

Dated: September , 2010

QBE INSURANCE

By _____

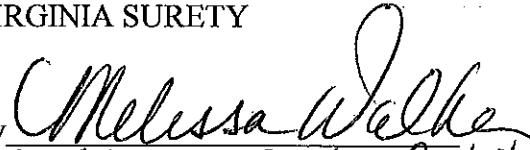
Dated: September , 2010

AURORA CONTRACTORS, INC.

By _____
Frank Vero, Sr.

Dated: September , 2010

VIRGINIA SURETY

By 
TPA For Virginia Surety - Galtmeyer Bassett
Services, Inc

Dated: September , 2010

INGERMANN SMITH, LLP, as Escrowee

By _____
Mary Anne Sadowski

Dated: September , 2010

SACHEM CENTRAL SCHOOL DISTRICT

AURORA CONTRACTORS, INC.

By 

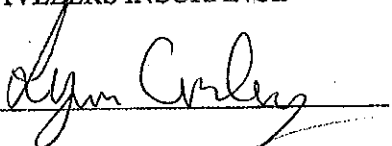
By _____
Frank Vero, Sr.

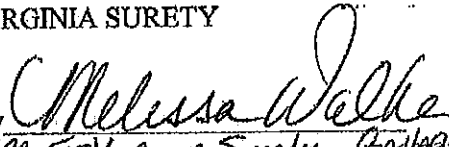
Dated: September , 2010

Dated: September , 2010

TRAVELERS INSURANCE

VIRGINIA SURETY

By 

By 
TPA For Virginia Surety - Gallagher Bassett
Dated: , 2010
Services, INC
11/4/10

Dated: September , 2010

INGERMAN SMITH, LLP, as Escrowee

QBE INSURANCE

By _____


By _____
Mary Anne Sadowski

Dated: September , 2010

Dated: September , 2010

SACHEM CENTRAL SCHOOL DISTRICT

AURORA CONTRACTORS, INC.

By 

By _____
Frank Vero, Sr.

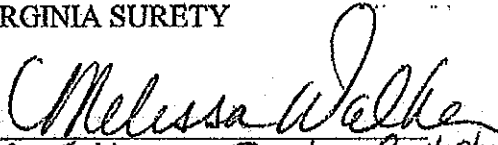
Dated: September , 2010

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TRAVELERS INSURANCE

VIRGINIA SURETY

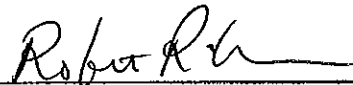
By _____

By 
TPA for Virginia Surety - Gailmeyer Bassett
Dated: _____, 2010
Services, Inc
11/4/10

Dated: September , 2010

QBE INSURANCE

INGERMAN SMITH, LLP, as Escrowee

By 
TPA for QBE Insurance Co.

By _____
Mary Anne Sadowski

Dated: September , 2010

Dated: September , 2010

Assignment and Acceptance of Claim

Aurora Contractors, Inc. ("Aurora") hereby assigns and transfers to Sachem Central School District ("Sachem") and its successors, assignees and personal representatives, any and all claims, demands, causes of action of any kind whatsoever that Aurora has or had with respect to any and all of its subcontractors or material-men who performed work and/or furnished materials, including, but not limited to Aurora's claims and causes of action for indemnity, contribution and breach of contract against Giaquinto Masonry, Inc, Restor Technologies, Inc., HST Roofing, Inc, Cord Contracting Co., Inc., Inter County Glass, Inc., and VIPA Restoration, Inc., the parties named Aurora's legal action as indexed 10-300057, in the Supreme Court, State of New York, County of Suffolk, ("Subcontractors") and the architects, engineers, construction-managers and consultants ("Consultants" in connection with the construction of the new high school known as Sachem East High School located at 177 Granny Road, Farmingdale, New York 11738 ("the Claims").

In contemplation of this assignment, the Claims have been accepted by Sachem as part of the settlement value in lieu of a larger cash payment from Aurora for Sachem's Roof Damage Claims and Wall Claims which Aurora and Sachem agree to be six million dollars (\$6,000,000.00).

In settlement of the Roof Damage Claims and Wall Claims against Aurora, Aurora has apportioned \$5,900,000 of its potential share of liability, for which Aurora is or may be entitled to indemnification, contribution or breach of contract or any other damages from the Subcontractors and/or Consultants, for the roof Damage Claims and Wall Claims to Sachem.

Sachem accepts this apportionment in lieu of a larger cash payment from Aurora for its damages for the Roof Damage Claims and Wall Claims.

At its sole election, Sachem may prosecute, collect, settle, compromise, release any and all claims against the aforementioned parties, in its sole discretion, deems advisable.

In the event any portion of this Assignment and Acceptance of Claim is declared invalid due to its wording (or absence of specific language), Aurora shall execute a revised Assignment, to be prepared by Sachem, to effectuate the parties' intent as expressed herein.

Dated: November 23, 2010

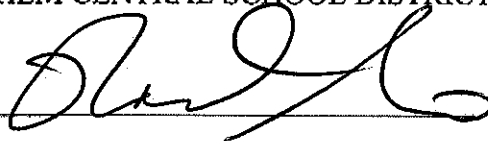
AURORA CONTRACTORS, INC.

By: _____


Frank Vero, Sr. President

BOARD OF EDUCATION,
SACHEM CENTRAL SCHOOL DISTRICT

By: _____



STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On the 23 day of November in the year 2010, before me, the undersigned, personally appeared Frank Vero, Sr., President of Aurora Contractors, Inc., personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacities, and that by his/her signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument.

Teresa Stainback
Notary Public

TERESA STAINBACK
Notary Public, State of New York
01ST4667485
Qualified in Suffolk County
Commission Expires August 25, 2014

STATE OF NEW YORK)
) ss.:
COUNTY OF Suffolk)

On the 1st day of December in the year 2010, before me, the undersigned, personally appeared Robert Scavo, President of the Board of Education, Sachem Central School District, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in his/her capacities, and that by his/her signature on the instrument, the individual, or the persons upon behalf of which the individual acted, executed the instrument.

Anna M Scricca
Notary Public

ANNA M. SCRICCA
Notary Public, State of New York
No. 4917072
Qualified in Suffolk County
Commission Expires 12/12

GENERAL RELEASE

Aurora Contractors, Inc., a corporation organized under the laws of the State of New York, as RELEASOR, in consideration of the sum of One Hundred Thousand Dollars (\$100,000.00), received from Sachem Central School District, as RELEASEE, receipt whereof is hereby acknowledged, releases and discharges the RELEASEE, RELEASEE'S heirs, executors, administrators, successors and assigns from all actions, causes of action, suits, debts, dues, sums of money, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, liabilities, obligations and demands whatsoever, in law, admiralty or equity, which against the RELEASEE, the RELEASOR, RELEASOR'S successors and assigns ever had, now have or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever prior to the day of the date of this RELEASE.

Whenever the text hereof requires, the use of singular number shall include the appropriate plural number as the text of the within instrument may require.

This RELEASE may not be changed orally.

IN WITNESS WHEREOF, the RELEASOR has caused this RELEASE to be executed by its duly authorized officers and its corporate seal to be hereunto affixed on November 23, 2010.

IN PRESENCE OF:

AURORA CONTRACTORS, INC.

By: 
Frank Vero, Sr. President

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On November 23, 2010, before me personally came Frank Vero, Sr., to me known, who, by me duly sworn, did depose and say that deponent resides at 2 Bluff Lane, Setauket that deponent is the President of Aurora Contractors, Inc., the corporation described in, and which executed the foregoing RELEASE, that deponent knows the seal of the corporation, that the seal affixed to the RELEASE is the corporate seal, that it was affixed by order of the board of directors of the corporation; and that deponent signed deponent's name by like order.


NOTARY PUBLIC

TERESA STAINBACK
Notary Public, State of New York
01ST4667485
Qualified in Suffolk County
Commission Expires August 25, 2014

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----X
AURORA CONTRACTORS, INC.,

Plaintiff,

Index No. 21012/06

-against-

SACHEM CENTRAL SCHOOL DISTRICT,

Defendant

**STIPULATION OF
DISCONTINUANCE
WITH PREJUDICE**

-----X
SACHEM CENTRAL SCHOOL DISTRICT,

Third-Party Plaintiff,

-against-

JOHNS MANVILLE,

Third-Party Defendant.

-----X
AURORA CONTRACTORS, INC.,

Fourth-Party Index No. 300057/10

Fourth-Party Plaintiff,

-against-

GIAQUINTO MASONRY INC., RESTOR
TECHNOLOGIES INC., HST ROOFING, INC.,
CORD CONTRACTING CO. INC., INTER COUNTY
GLASS INC. and VIPA RESTORATION INC.,

Fourth-Party Defendants.

-----X

IT IS HEREBY STIPULATED AND AGREED, by and between the two parties below
that whereas no party hereto is an infant, incompetent person for whom a committee has been
appointed or conservatee and no person not a party has an interest in the subject matter of this
action, the within action (and all of the claims and various counterclaims asserted therein) is
hereby discontinued with prejudice, as between themselves, and without costs to any party.

IT IS FURTHER STIPULATED AND AGREED that this Stipulation may be executed in

counterparts.

Dated: New York, New York

~~September~~, 2010

Nv 30

INGERMAN SMITH, LLP
Attorneys for Defendant,
Sachem Central School District
150 Motor Parkway, Suite 400
Hauppauge, New York 11788
(631) 261-8834

By: 

Mary Anne Sadowski

GOETZ FITZPATRICK, LLP
Attorneys for Plaintiff,
Aurora Contractors, Inc.
One Penn Plaza, Suite 4401
New York, New York, 10119
(212) 695-8100

By: 

Neal M. Eiseman

GENERAL RELEASE

Sachem Central School District, as RELEASOR, in consideration of the sum of Ten Dollars and other valuable consideration (\$10.00) received from Aurora Contractors, Inc., as RELEASEE, receipt whereof is hereby acknowledged, releases and discharges the RELEASEE, RELEASEE'S successors, assigns, insurers and bonding companies from all actions, causes of action, suits, debts, dues, sums of money, bonds, covenants, contracts, controversies, agreements, promises, damages, judgments, claims, liabilities, obligations and demands whatsoever, which against the RELEASEE, the RELEASOR, RELEASOR'S successors and assigns ever had, now have or hereafter can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever prior to the day of the date of this RELEASE arising out or in connection with the Sachem East High School located at 177 Granny Road, Farmingville, New York 11738.

Whenever the text hereof requires, the use of singular number shall include the appropriate plural number as the text of the within instrument may require.

This RELEASE may not be changed orally.

IN WITNESS WHEREOF, the RELEASOR has caused this RELEASE to be executed by its duly authorized officers and its corporate seal to be hereunto affixed on Dec 1, 2010.

IN PRESENCE OF:

SACHEM CENTRAL SCHOOL DISTRICT

By: *[Signature]*

STATE OF NEW YORK)
) ss.:
COUNTY OF SUFFOLK)

On Dec 1, 2010, before me personally came Robert Scaro, to me known, who, by me duly sworn, did depose and say that deponent resides at _____, that deponent is the President of Sachem CSD, the municipal corporation described in, and which executed the foregoing RELEASE, that deponent knows the seal of the corporation, that the seal affixed to the RELEASE is the corporate seal, that it was affixed by order of the board of directors of the corporation; and that deponent signed deponent's name by like order.

Anna M. Scricca
NOTARY PUBLIC

ANNA M. SCRICCA
Notary Public, State of New York
#17072
Suffolk County
Commission Expires 12/12