

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into as of the last date of signature on the signature page below ("Effective Date"), which settlement shall be by and among (i) Olympic Construction LLC ("Olympic"), (ii) Xtreme Cleaning Solutions, LLC, successor by merger to Xtreme Concrete Solutions, LLC ("Xtreme"), and (iii) the Lexington-Fayette Urban County Government ("LFUCG"); which shall fully and globally settle and release all claims by and against Olympic, Xtreme, and LFUCG (collectively, the "Parties" and, individually, a "Party") as set forth herein.

### RECITALS:

A. Olympic and Xtreme are parties to that Civil Action styled *Olympic Construction, LLC v. Xtreme Concrete Solutions, LLC*, Fayette Circuit Court, Case No 19-CI-2947 (the "Lawsuit").

B. The Lawsuit concerns concrete coating work ("Work") performed by Xtreme under a subcontract agreement with Olympic ("Subcontract") related to the construction of Lexington Fire Station No. 2 ("Fire Station"), owned by LFUCG and located at 1276 Eastland Drive, Lexington, KY 40505 ("Project"), in which Olympic alleges that Xtreme breached the Subcontract (the "Dispute"). Xtreme denies that it breached the Subcontract. Rather than insisting that Olympic and/or Xtreme to repair and/or replace the Work, LFUCG has elected to replace the Work using a third-party contractor (the "Remediation").

C. Subsequent to the filing of the Lawsuit, Olympic, Xtreme, and LFUCG have agreed to resolve all matters in dispute between them concerning the Lawsuit, the Dispute, and the Remediation on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. As used herein, the following capitalized terms shall have the meaning assigned below:

"Affiliates" means such party's officers, directors, principals, managers, members, interest holders, sister companies, subsidiaries, other affiliates, representatives, agents, attorneys, insurers, employees, heirs, personal representatives, successors, and assigns.

"Agreed Order" means the Agreed Order dismissing the Lawsuit in the form attached hereto as Exhibit A.

The "City" means LFUCG of Lexington, Kentucky.

"Claims" means any and all accounts, covenants, agreements, undertakings, obligations, warranties, claims, wages, salaries, distributions, reimbursements, debts, liabilities, offsets, rights under equity interests, demands, costs, expenses, actions or causes of action of every nature,

character and description, whether arising at law or in equity or under statute, regulation or otherwise, and whether liquidated or unliquidated, contingent or noncontingent, whether now known or unknown, suspected or unsuspected, concerning all claims stated in the Lawsuit or that could have been raised in the Lawsuit, and concerning the Dispute, Lawsuit, and/or Remediation, excluding only the obligations arising under this Agreement.

“Olympic” means Olympic Construction, LLC.

“Person” means any natural person and any legal entity with the ability to enter into contracts.

“Xtreme” means Xtreme Concrete Solutions, LLC .

2. Payment.

- (a) Within ten (10) days of the Effective Date, Xtreme shall pay to LFUCG the sum of Twenty Thousand Dollars (\$20,000) (“Xtreme Settlement Amount”) in exchange for: (i) the release of all Claims by Olympic that Olympic has or could assert against Xtreme related to the Project; (ii) the release of all Claims by LFUCG that LFUCG has or could assert against Xtreme related to the Project; and (iii) Olympic’s dismissal of the Lawsuit with prejudice. The Settlement Amount shall be made payable to Lexington-Fayette Urban County Government” and forwarded to “LFUCG, Attn: Charles Edwards, Dept. of Law, 200 East Main Street, Lexington, KY 40507.”
- (b) Within ten (10) days of the Effective Date, Olympic shall pay to LFUCG the sum of Three Thousand Two Hundred Dollars (\$3,200) (“Olympic Settlement Amount”) in exchange for: (i) the release of all Claims by LFUCG that LFUCG has or could assert against Olympic related to the Project; and (ii) the release of all Claims by Xtreme that Xtreme has or could assert against Olympic related to the Project. The Settlement Amount shall be made payable to Lexington-Fayette Urban County Government” and forwarded to “LFUCG, Attn: Charles Edwards, Dept. of Law, 200 East Main Street, Lexington, KY 40507.” In addition to the Olympic Settlement Amount, LFUCG shall keep, in exchange for the releases set forth in this Paragraph 2(b), retainage in the amount of Thirty Thousand Dollars (\$30,000) currently being withheld from Olympic by LFUCG as it relates to the Project.
- (c) LFUCG shall not negotiate any Party’s settlement check until LFUCG has received both the Xtreme Settlement Amount and the Olympic Settlement Amount. Further, if LFUCG has not received both the Xtreme Settlement Amount and the Olympic Settlement Amount within ten business days of the Effective Date, this

Agreement shall be null and void and LFUCG shall promptly return any settlement check it has received.

3. Agreed Order to be Filed in the Lawsuit. Simultaneously with the full execution of this Agreement, the Agreed Order shall be executed by the Parties' respective counsel. Upon LFUCG's confirmation of deposit of both the Xtreme Settlement Amount and the Olympic Settlement Amount, which confirmation shall be promptly delivered to counsel for Olympic and Xtreme, counsel for Olympic shall file the Agreed Order in the record of the Lawsuit. The Parties agree to be bound by all of the terms of the Agreed Order.

4. Settlement. The Parties agree to fully and finally settle all Claims between them on the terms and conditions of this Agreement.

5. Release of Xtreme. Olympic and LFUCG hereby jointly and severally release, remise, acquit and forever discharge each of Xtreme and its affiliated companies, from any and all liability regarding the Project, Dispute, Lawsuit, and Remediation, and from any and all Claims that Olympic or LFUCG ever had, now have, or might hereafter have against Xtreme or its Affiliates. Olympic and LFUCG represent and warrant that they have not purported to transfer, assign or otherwise convey any interest in any matter released herein to any other Person and that their execution hereof does not require the consent of or notice to any Person not previously obtained or given. Olympic and LFUCG agree that they shall forever refrain and forbear from commencing, instituting, joining in or prosecuting any lawsuit, action, or other proceeding, whether judicial, administrative or otherwise against Xtreme or any of its affiliated companies or otherwise attempting to collect from or enforce against Xtreme or any of its affiliated companies, any of the Claims. Olympic and LFUCG warrant that none of them hold any Claims against Xtreme or its affiliated companies not fully released herein. This paragraph does not apply to the obligations arising under this Agreement, the Agreed Order, and any documents executed in furtherance of this Agreement under Section 11 below.

6. Release of Olympic. Xtreme and LFUCG, hereby jointly and severally release, remise, acquit and forever discharge each of Olympic and its affiliated companies from any and all liability regarding the Dispute, Lawsuit, and Remediation, and from any and all Claims that Xtreme or LFUCG ever had, now have, or might hereafter have against Olympic or its Affiliates. Xtreme and LFUCG represent and warrant that they have not purported to transfer, assign or otherwise convey any interest in any matter released herein to any other Person and that their execution hereof does not require the consent of or notice to any Person not previously obtained or given. Xtreme and LFUCG agree that they shall forever refrain and forbear from commencing, instituting, joining in or prosecuting any lawsuit, action, or other proceeding, whether judicial, administrative or otherwise against Olympic or any of its affiliated companies or otherwise attempting to collect from or enforce against Olympic or any of its affiliated companies, any of the Claims. Xtreme and LFUCG warrant that none of them hold any Claims against Olympic or any of its affiliated companies not fully released herein. This paragraph does not apply to the obligations arising under this Agreement, the Agreed Order, and any documents executed in furtherance of this Agreement under Section 11 below.

7. Release of LFUCG. Olympic and Xtreme hereby jointly and severally release, remise, acquit and forever discharge LFUCG from any and all liability regarding the

Dispute, Lawsuit, and Remediation, and from any and all Claims that Olympic or Xtreme ever had, now have, or might hereafter have against LFUCG. Olympic and Xtreme represent and warrant that they have not purported to transfer, assign or otherwise convey any interest in any matter released herein to any other Person and that their execution hereof does not require the consent of or notice to any Person not previously obtained or given. Olympic and Xtreme agree that they shall forever refrain and forbear from commencing, instituting, joining in or prosecuting any lawsuit, action, or other proceeding, whether judicial, administrative or otherwise against LFUCG or otherwise attempting to collect from or enforce against LFUCG any of the Claims. Olympic and Xtreme warrant that none of them hold any Claims against LFUCG not fully released herein. This paragraph does not apply to the obligations arising under this Agreement, the Agreed Order, and any documents executed in furtherance of this Agreement under Section 11 below.

8. Warranties of Olympic. Olympic warrants and represents to the Parties as follows:

(a) This Agreement and the ancillary documents referenced herein are legal, valid, and binding upon Olympic, and are enforceable against it in accordance with their terms, subject only to principles of equity and laws applicable to the rights of creditors generally, including bankruptcy laws.

(b) The execution, delivery, and performance of this Agreement by Olympic does not and will not (i) violate any law or regulation to which Olympic is subject or by which its properties are bound, (ii) violate the terms of any injunction, decision, order, or decree of any governmental or arbitration authority applicable to Olympic or its properties, or (iii) breach, conflict with, or cause any rights to arise under any agreement to which Olympic is a party or by which its properties are bound.

(c) To the knowledge of Olympic, there are no Claims that have been or could be asserted by any Person who is not a party to this Agreement against Xtreme or LFUCG arising out of or relating to the Project or the Dispute.

9. Warranties of Xtreme. Xtreme warrants and represents to the Parties as follows:

(a) This Agreement and the ancillary documents referenced herein are legal, valid, and binding upon Xtreme, and are enforceable against it in accordance with their terms, subject only to principles of equity and laws applicable to the rights of creditors generally, including bankruptcy laws.

(b) The execution, delivery, and performance of this Agreement by Xtreme does not and will not (i) violate any law or regulation to which Xtreme is subject or by which its properties are bound, (ii) violate the terms of any injunction, decision, order, or decree of any governmental or arbitration authority applicable to Xtreme or its properties, or (iii) breach, conflict with, or cause any rights to arise under any agreement to which Xtreme is a party or by which its properties are bound.

(c) To the knowledge of Xtreme, there are no Claims that have been or could be asserted by any Person who is not a party to this Agreement against Olympic or LFUCG arising out of or relating to the Project or the Dispute.

10. Warranties of LFUCG. LFUCG warrants and represents to the Parties as follows:

(a) This Agreement and the ancillary documents referenced herein are legal, valid, and binding upon LFUCG, and are enforceable against it in accordance with their terms, subject only to principles of equity and laws applicable to the rights of creditors generally, including bankruptcy laws.

(b) The execution, delivery, and performance of this Agreement by LFUCG does not and will not (i) violate any law or regulation to which LFUCG is subject or by which its properties are bound, (ii) violate the terms of any injunction, decision, order, or decree of any governmental or arbitration authority applicable to LFUCG or its properties, or (iii) breach, conflict with, or cause any rights to arise under any agreement to which LFUCG is a party or by which its properties are bound.

(c) To the knowledge of LFUCG, there are no Claims that have been or could be asserted by any Person who is not a party to this Agreement against Xtreme or Olympic arising out of or relating to the Project or the Dispute.

11. Ancillary Agreements. The Parties agree to execute any agreements or pleadings of any character and take all actions that may be reasonably necessary to effectuate the terms of this Agreement.

12. Expenses. The Parties shall bear their respective expenses of counsel incidental to this Agreement, the Dispute, and the Lawsuit.

13. Entire Agreement. This Agreement and the Agreed Order executed concurrently herewith evidence the entire agreement of the parties concerning the subject matter hereof, and all oral discussions and prior agreements are merged herein. No Party has relied upon a statement, representation, warranty, or agreement by any other Party except as set forth in such documents.

14. Compromise of Disputed Claims. This Agreement is the result of a compromise of disputed claims and it is not intended as nor shall it be interpreted as an admission of liability by any Party as to any matter.

15. Construction. This Agreement has been negotiated by the parties with benefit of counsel and shall not be construed against any Party as author. This Agreement shall not be deemed amended, modified, waived, or construed to vary from its express terms by any course of performance, course of dealing, or usage of trade.

16. Severability. The provisions hereof shall be enforced to the fullest lawful extent, and any invalidity of any provision hereof shall not impair the effectiveness of the other provisions hereof.

17. Amendments and Consents. No provision of this Agreement shall be amended, modified, or waived, and no related consent, approval, or additional agreement shall be binding, except as evidenced by a written document signed in hand by the Party against whom such undertaking is to be enforced. A document signed in hand may be effectively delivered by an electronic record (such as a fax or .pdf file).

18. Valid Consideration; Binding Agreement. The Parties warrant, represent and acknowledge that this Agreement has been executed and delivered by each of them for adequate consideration and value under all applicable laws, and that this Agreement is valid, binding and enforceable in accordance with its terms. This Agreement is intended to be a full and final settlement among the Parties of all Claims relating to the Project. The consideration stated in this Agreement is the full consideration for this Agreement, and no Party has agreed to take any action, forebear from any action, or pay any money not specifically set forth herein.

19. Assignment. This Agreement shall be binding upon and inure to the benefit of each Party and such Party's Affiliates.

20. Exhibits and Schedules. All exhibits and schedules referred to in this Agreement are incorporated herein by reference.

21. Recitals. The Parties represent to each other and acknowledge that the Recitals are true and correct and incorporated herein as part of this Agreement.

22. Captions Not Controlling. Captions and headings have been included in this Agreement for the convenience of the Parties, and shall not be construed as affecting the content of the respective paragraphs.

23. Gender and Number. Words used herein indicating gender or number shall be read as context may require.

24. Applicable Law. The validity, construction and enforcement of this Agreement shall be determined according to the laws of Kentucky applicable to contracts executed, delivered and performed entirely within that state. Any action related to or arising from this Agreement shall be brought in the court of appropriate jurisdiction in Fayette County, Kentucky.

25. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same Agreement. This Agreement may be executed by facsimile signature or by scanned signature attached to an email and any such signature shall be deemed an original. This Agreement shall be null and void if all Parties have not signed this Agreement by 5:00 P.M. Eastern Time on December 2, 2019.

26. Other General Provisions. Indulgence in the existence of a breach hereunder or any other departure from the terms of this Agreement shall not prejudice a Party's right to demand strict compliance with this Agreement. There are no third party beneficiaries of this Agreement other than those Persons released of any Claims pursuant to this Agreement (but

the Parties hereto may amend this Agreement without the joinder or consent of any such Persons).

Olympic Construction, LLC

Xtreme Concrete Solutions, LLC

By: \_\_\_\_\_

By: Justica Wiehtel

Its: \_\_\_\_\_

Its: COO

Date: \_\_\_\_\_

Date: 10.28.19

Lexington-Fayette Urban County Government

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

COMMONWEALTH OF KENTUCKY  
FAYETTE CIRCUIT COURT  
CIVIL ACTION NO. 19-CI-2947

**OLYMPIC CONSTRUCTION, LLC**

**PLAINTIFF**

v.

**AGREED ORDER OF DISMISSAL**

**XTREME CONCRETE SOLUTIONS, LLC**

**DEFENDANT**

The parties having agreed and the Court being sufficiently advised, **IT IS HEREBY ORDERED** as follows:

1. All claims that have been or could have been asserted in this action are hereby dismissed with prejudice as settled.
2. Each party shall bear their own court costs and attorney's fees.

Dated \_\_\_\_\_.

\_\_\_\_\_  
JUDGE, FAYETTE CIRCUIT COURT

THE UNDERSIGNED COUNSEL HAVE REVIEWED THE FOREGOING ORDER AND AGREE TO ITS TERMS ON BEHALF OF THEIR RESPECTIVE CLIENTS:

\_\_\_\_\_  
Gregory P. Parsons  
Rebecca M.W. Sherman  
STITES & HARBISON, PLLC  
250 West Main Street, Suite 2300  
Lexington, Kentucky 40507

\_\_\_\_\_  
James W. Proud  
FULTZ MADDOX DICKENS PLC  
101 S. Fifth Street, 27<sup>th</sup> Floor  
Louisville, Kentucky 40202



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, upon:

Gregory P. Parsons  
Rebecca M.W. Sherman  
STITES & HARBISON, PLLC  
250 West Main Street, Suite 2300  
Lexington, Kentucky 40507  
*Counsel for Plaintiff*

James W. Proud  
FULTZ MADDOX DICKENS, PLC  
101 S. Fifth Street, 27<sup>th</sup> Floor  
Louisville, Kentucky 40202  
*Counsel for Defendant*

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FAYETTE CIRCUIT CLERK