

SETTLEMENT AGREEMENT AND RELEASE

For good and valuable consideration as hereinafter set forth, this SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made and entered into by CNY Scrap Processing, LLC and Carrier Salvage & Recycling, LLC (the "Releasers"), and the Town of Sterling and Bruce Applebee (the "Releasees", and, collectively with the Releasers, the "Parties", and each a "Party").

WHEREAS, there is pending in the New York State Supreme Court, Cayuga County, New York an action entitled *CNY Scrap Processing, LLC and Carrier Salvage & Recycling, LLC, Plaintiffs, versus Town of Sterling and Bruce Applebee, individually and as purported Code Enforcement Officer of the Town of Sterling, Defendants*, Index No. 2015-206 (the "Action") related to parcels of land owned and/or leased by the Releasers in the Town of Sterling, located at 14725-14735 State Route 104 (the "Property"); and

WHEREAS, these named Parties wish to resolve all claims, disputes, and differences between them that arise in any way out of the Action or out of the subject matter of the Complaint and other pleadings and motions filed in the Action; and

WHEREAS, the Releasers and the Town of Sterling wish to set forth and define the acceptable and approved uses of the Property;

NOW THEREFORE, in consideration of the following covenants, obligations, undertakings and consideration, the sufficiency of which is acknowledged, the Parties expressly, knowingly, voluntarily and mutually agree as follows:

1. **Settlement Payment.** Releasers agree to accept the sum of TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS (\$22,500.00), paid to CNY Scrap Processing, LLC and Hall and Karz as Attorneys and subject to a 1099 issuing, as full settlement, accord, and satisfaction of any and all claims, demands, rights, and liens that he has or may have, of any kind, directly or derivatively, accrued or contingent, past, present or future, against the Released Parties, as defined in Paragraph 2, that in any way arise out of or relate to the Action or the subject matter of the Complaint. Payment is to be made within thirty days of execution of this Agreement by all Parties.

2. **Permitted Property Uses.** The Releasers are permitted to use the Property as a Junkyard as that term is defined in the Town of Sterling's 2014 Land Use Regulations, as amended. The Releasers are also permitted to use the Property for those activities, including scrap processing activities, described in the April 27, 2020 letter from Peter Rolph, Esq., attached hereto as Exhibit A, and incorporated as though fully set forth herein, in those areas of the Property historically used for such activities. The Releasers agree that they are not permitted to use the Property for any other use unless it conforms to the use regulations prescribed by the

Town of Sterling's 2014 Land Use Regulations for the zoning district in which the Property is located.

3. **Hours of Operation.** The Parties agree that the Releasors are permitted to use the Property for those activities described in Paragraph 2 during the following days and times ONLY:

| | |
|------------------|------------------------|
| Monday – Friday: | 8:00 a.m. – 6:00 p.m. |
| Saturday: | 9:00 a.m. – 4:00 p.m. |
| Sunday: | 10:00 a.m. – 2:00 p.m. |

The Releasors are not permitted to perform the activities described in Paragraph 2 outside the hours set forth above.

4. **Noise.** The Releasors confirm that the permitted uses described in Paragraph 2 generate noise, at a maximum, similar to or less than the noise of traffic on Route 104. Therefore the Parties stipulate and agree that the activities performed by the Releasors on weekends will not exceed 90 decibels as measured from the parcels adjacent to the Property, or from Route 104.

5. **Maintenance / Landscaping / Aesthetics.**

- 5.1. The Releasors agree to plant blue spruce or arbor vitae 8-10 feet apart in front of the existing fence along Route 104.
- 5.2. The Releasors agree to require all vehicles to remain on the existing paved / cobblestone area when they are in front of the existing fence on the Property.
- 5.3. Whenever possible, the Releasors agree to perform the activities described in Paragraph 2 behind the existing fence on the Property.
- 5.4. The Releasors agree to maintain a substantial natural barrier of at least 100 feet of forested area along the north, east, and west Property lines wherever currently in existence.
 - 5.4.1. Releasors are currently performing remediation activities at the Property as required the New York Department of Environmental Conservation. These and other legally required remediation activities may necessitate that the Releasors disrupt the natural barrier described in Section 5.4 from time to time. In the event any such disruption occurs, the Releasors agree and warrant that they will reestablish, restore, and/or maintain any

such disrupted natural barrier as soon as possible and without undue delay.

6. **Release.** In exchange for the consideration set forth in Paragraph 1, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, Releasors, on behalf of themselves, and their heirs, predecessors, successors, affiliates, parents, subsidiaries, related corporations, administrators, representatives, agents, insurers, subrogees, and assigns, does hereby forever release, acquit, and discharge each of the Releasees and their heirs, predecessors, successors, affiliates, parents, subsidiaries, related corporations, administrators, representatives, agents, insurers, subrogees, and assigns, and each of their respective past, present, and future officers, directors, subsidiaries, divisions or other associated companies, shareholders, members, managers, agents, attorneys, representatives, third-party administrators, servants, employees, distributors, and dealers (collectively the "Released Parties"), from any and all claims, demands, obligations, judgments, actions, causes of action, liens and liabilities for losses and damages, whether personal, property, or economic, whether now known or unknown that in any way arose or will arise out of the subject matter of the Complaint or the Action, that are or were the subject of the Action, or that in any way arose or will arise out of any occurrence, act, or omission that is, was, or could have been alleged in the Action (collectively the "Released Claims"). It is the Parties' intent to effect a general release of all of the Released Claims from the beginning of the world to the date of this Release.

7. **Miscellaneous Provisions.**

- 7.1. This Release is executed with Releasors' full understanding that the damages and events alleged in the Action may result in further damages or effects that may not now appear, that may not now be known or suspected by the Releasors, and that Releasors may have no reason to know or suspect; nevertheless, it is the Releasors' intent by this Release to fully compromise, settle, and release any and all claims, against any of the Released Parties, that they now have or may hereafter acquire in any manner by reason of or arising out of any of the events, acts, or omissions described in any of the pleadings in the Action.
- 7.2. Releasors agree to perform all acts necessary to dismiss the Action with prejudice. To that end, the Releasors hereby irrevocably authorize and directs their attorney of record in the Action to immediately execute and file with the appropriate court a fully executed Stipulation of Dismissal with Prejudice; each Party to bear its own attorneys' fees and costs.
- 7.3. Releasors represent and warrant that no portion of any claim, right, action, or cause of action against any Party or the Released Parties that he has or might have arising out of the events, acts, or omissions described in the pleadings in

the Action, or any portion of any recovery or settlement to which they might be entitled, has been or will be assigned or transferred by or for them in any manner whether expressly or by operation of law.

- 7.4. Releasors represent and warrant that all liens and/or subrogation claims with respect to the settlement proceeds will be satisfied by Releasor. If such a lien is asserted against the proceeds herein, or against the Released Parties, or any of them, then, in consideration of the payment made to the Releasors, the Releasors covenants to pay and satisfy any such asserted lien, or to satisfy the same on a compromise basis, and to obtain in any event a release of the Released Parties, and to indemnify and hold harmless said parties from any costs, expenses, attorney fees, claims, actions, judgments, or settlements resulting from the assertion or enforcement of such lien by any entity having such lien.
- 7.5. Releasors understand that the Released Parties will in no way be responsible for the allocation of the settlement proceeds at issue, and Releasors agrees that the allocation will be determined by Releasors and their counsel, and they hereby release and forever discharge the Released Parties, jointly and severally, from any claim or liability relating to the division of settlement proceeds and agrees to defend, indemnify and hold harmless the Released Parties, jointly and severally, against any and all such claims or liabilities.
- 7.6. Releasors hereby acknowledge that they have not relied on any statement, representation, omission, inducement, or promise of any other Party (or any other officer, agent, employee, representative, or attorney for any other Party) in executing this Agreement, or making the settlement provided for herein, except as expressly stated in this Agreement.
- 7.7. Releasors agree that the exchange of consideration described herein and the underlying settlement are the compromise of disputed claims and are not to be construed as an admission of any liability, fault, or responsibility on the part of any of the other Released Parties, by whom liability and fault is, and has always been, expressly denied.
- 7.8. This Agreement shall be interpreted in accord with the laws of the State of New York.
- 7.9. The Parties acknowledges that this Agreement is the product of negotiations between counsel, and that if there is ever a dispute concerning the meaning of any of its terms, each Party shall take the position that its own counsel prepared this Agreement such that ambiguities within its terms are not to be construed in favor of anyone.

7.10. This Agreement integrates all understandings, promises and representations between the Releasors and the other Parties of every kind and nature. Any promise, undertaking or representation not contained within the terms of this Agreement was intentionally omitted, because the Parties intend this Agreement to supersede all such prior and concurrent promises, representations and undertakings. This Agreement may not be amended or modified without the prior express written consent of all the Parties.

7.11. Releasors acknowledge and represent that they has had the opportunity to consult with counsel concerning the terms of this Agreement, that their counsel has reviewed this Agreement, and that they execute this Agreement after and as a result of having received advice of counsel on its meaning and implications.

7.12. If a provision of this Agreement is held to be illegal or invalid by a court of competent jurisdiction, such provision shall:

7.12.1. be reduced to the minimum extent necessary to be legal and valid, as long as the revised provision remains consistent with the intent of the parties expressed herein; or

7.12.2. if the foregoing is not possible, deemed to be severed and deleted. Neither such revision nor such severance and deletion shall affect the validity of the remaining provisions of this Release.

8. **Effective Date of Agreement.** This Agreement shall become effective upon the execution and delivery hereof by the parties hereto.

IN WITNESS WHEREOF, the Parties execute this Agreement on the date hereunder:

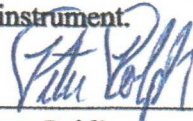
CNY Scrap Processing, LLC
Carrier Salvage & Recycling, LLC

By: Shelly Cairns

Date: 10/14/2020

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

On this 14 day of October, 2020, before me personally came Shelby Corrier 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 he executed the same in his capacity, and that by his signature on the instrument, the individual or the persons upon behalf of which the individual acted, executed the instrument.



Notary Public
PETER ROLPH
NOTARY PUBLIC, STATE OF NEW YORK
ONTARIO COUNTY REG. #02406105873
COMMISSION EXPIRES MARCH 15, 2020

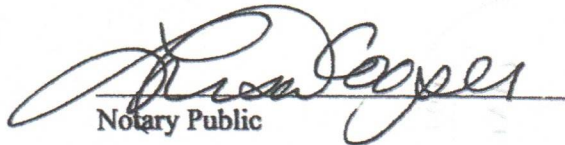
The Town of Sterling

By: Joan Kelley
Joan Kelley, Town Supervisor

Date: 10/8/20

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

On this 8 day of October, 2020, before me personally came Joan Kelley, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual or the persons upon behalf of which the individual acted, executed the instrument.


Notary Public

LISA COOPER
NOTARY PUBLIC, State of New York
No. 01CO5067933
Qualified in Cayuga County
Commission Expires October 28, 2022