

## RESOLUTION ADOPTED MARCH 15 2010

- Res. #2010-90 Payment of Vouchers, \$335,463.44
- Res. #2010-91, Resolution Amending the Annual Meeting Schedule (Changing Apr. 5 to March 29)
- Res. #2010-92, Authorization for the Refund of Taxes (2 refunds - duplicate payments)
- Res. #2010-93, Authorization for the Payout of Accumulated Compensatory Time (M. Szemcsak \$1,756)
- Res. #2010-94, Transfer of Appropriations, \$375,000 (From Clerk, Treasurer, Manager, BOCA, DPW S & W, Insurance, Heating Oil, Gas & Tipping Fees OE to Legal & Terminal Leave)
- Res. #2010-95, Acceptance of Bid & Contract Award for Roofing and Exterior Repairs of Public Safety Building (Capri Construction \$141,355)
- Res. #2010-96, Resolution Authorizing Settlement of Litigation Known as Fondacaro Companies, Inc. v Lower Township v. Van-Note Harvey Associations and Bruce S. Graham, P.E.
- Res. #2010-97, Issuance of 2010 Limousine & Operator's Licenses (Shore Limo - 3 Vehicles - 2 Drivers)
- Res. #2010-98, Resolution Providing for a Meeting Not Open to the Public in Accordance with the Provisions of the New Jersey Open Public Meetings Act, N.J.S.A. 10:4-12." (Attorney Client Privilege)





Vendor # Name	PO #	PO Date	Description	Status	Amount	Void Amount	Contract	PO Type
10-00439	02/25/10	MONTHLY INTERNET - FIRE SAFETY	Open	100.10	0.00			
10-00541	03/09/10	MONTHLY INTERNER - TOWNHALL	Open	95.14	0.00			
					-----			
					195.24			
01162	D.R. MYERS DISTRIBUTING CO*							
10-00317	02/10/10	USIM ANNUAL RENEWAL	Open	82.50	0.00			
01170	VERIZON WIRELESS* F/S							
10-00562	03/09/10	CELL SERVICE - FIRESAFETY	Open	171.72	0.00			
01200	DELTA DENTAL PLAN OF NJ							
10-00576	03/10/10	MARCH 2010	Open	16,297.31	0.00			
01239	DIANA L DeNOTE							
10-00577	03/10/10	CONTRACTUAL REIMBURSEMENT	Open	126.03	0.00			
01338	EAGLE CONSTRUCTION SVCS, INC*							
09-02328	08/25/09	ADA TOWNSHIP IMPROVEMENTS	Open	69,850.58	0.00			B
01480	E-Z PASS							
10-00553	03/09/10	EZ-PASS ACCT#20001152-17226	Open	200.00	0.00			
01534	IMPERIAL TENT COMPANY*							
10-00245	02/04/10	20X30 TENT 10X10 TENT	Open	3,575.00	0.00			
01598	DEARBORN NATIONAL							
10-00454	03/01/10	MARCH, 2010 LIFE INSURANCE	Open	578.68	0.00			
01649	GARDEN STATE HWY PRODUCTS, INC*							
10-00321	02/10/10	WHITE H.I.P SHEETING-SIGNS	Open	770.00	0.00			
01653	GENTILINI FORD*							
10-00320	02/10/10	TRANSMISSION FOR PICKUP-DPW	Open	2,616.25	0.00			
01655	GANN LAW BOOKS*							
09-02845	10/27/09	NJ COURT RULES-ANNOTATED	Open	105.50	0.00			
01727	CHANNEL MARINE CONSTRUCTION IN							
10-00151	01/22/10	DELEWARE BAY OUTFALL EXTENSIO	Open	57,393.70	0.00			
01781	HATCH MOTT MACDONALD, LLC*							
09-01918	07/10/09	PREPARE AN APPLICATION TO THE	Open	464.00	0.00			B
10-00527	03/08/10	ESCROW BILLING	Open	1,626.20	0.00			
					-----			
					2,090.20			
01806	ANTHONY J HARVATT, II, ESQ							
10-00025	01/06/10	PROFESSIONAL SERVICE TO ZBA	Open	300.00	0.00			
01837	ROBERT HODSDEN							
09-03581	03/03/10	CONTRACTUAL REIMBURSEMENT	Open	191.68	0.00			
10-00476	03/02/10	CONTRACTUAL REIMBURSEMENT	Open	182.66	0.00			

Vendor #	Name	Status	Amount	Void Amount	Contract	PO Type
			374.34			
01860	GNL DOORS & HARDWARE*					
09-03390	12/15/09 DOORS AT BENNETT'S CROSSING	Open	615.00	0.00		
01968	ITS MAILING SYSTEMS, INC*					
09-03367	12/14/09 POSTAGE CHIP EFF 1/04/10	Open	1,980.00	0.00		
10-00246	02/04/10 INK CART - TOWN HALL	Open	245.36	0.00		
			2,225.36			
02134	THOMAS KEYWOOD					
10-00468	03/02/10 TRAINING - MEALS	Open	48.07	0.00		
02140	KINDLE FORD LINC/MERC., INC.*					
10-00260	02/04/10 PARTS FOR DPS VEHICLES	Open	1,219.55	0.00		
10-00319	02/10/10 TRANSMISSION FOR PICKUP-DPW	Open	3,997.50	0.00		
			5,217.05			
02247	LAWSON PRODUCTS, INC.*					
10-00266	02/04/10 SUPPLIES FOR GARAGE-DPW	Open	1,098.77	0.00		
02248	LAWMEN SUPPLY*					
09-03254	12/01/09 AMMO	Open	265.80	0.00		
02517	BRIAN MARKER					
10-00549	03/09/10 CONTRACTUAL REIMBURSEMENT - V	Open	190.00	0.00		
02521	JOSEPH MARKER					
10-00456	03/01/10 2010 MEDICAL SUPP	Open	2,007.00	0.00		
02541	ROBERT D. MARTIN, JR					
10-00494	03/04/10 CONTRACTUAL REIMBURSEMENT	Open	81.00	0.00		
02585	WILLIAM MASTRIANA					
10-00469	03/02/10 TRAINING - MEALS	Open	57.37	0.00		
02629	MATTHEW MASTALSKI					
10-00457	03/01/10 SHOE ALLOWANCE FOR 2010-DPW	Open	139.95	0.00		
02749	MODERN GAS COMPANY/INDERGY*					
10-00334	02/11/10 EMERGENCY GENERATORS SHUNPIKE	Open	105.91	0.00		
10-00395	02/23/10 EMERGENCY GENERATORS	Open	73.88	0.00		
			179.79			
02811	JAMES MOY					
09-03582	03/04/10 CONTRACTUAL REIMBURSEMENT	Open	70.00	0.00		
10-00493	03/04/10 CONTRACTUAL REIMBURSEMENT	Open	207.00	0.00		
			277.00			



Vendor # Name	Status	Amount	Void Amount	Contract	PO Type
PO # PO Date Description					
10-00477 03/03/10 3/4/10 SJNIGP	Open	30.00	0.00		
03814 UNIVERSAL COMPUTING SERV.,INC*					
10-00291 02/08/10 MESSAGE MAILERS	Open	348.75	0.00		
03876 UNITED WATER TREATMENT CO INC*					
10-00327 02/10/10 COMPLETE WATER TREATMENT FOR	Open	480.00	0.00		
03935 STAPLES BUSINESS ADVANTAGE*					
10-00386 02/19/10 OFFICE SUPPLIES/TONER	Open	161.18	0.00		
03969 VERIZON					
10-00489 03/04/10 PHONE SERVICE	Open	463.22	0.00		
03971 VERIZON WIRELESS					
10-00472 03/02/10 MDT WIRELESS	Open	544.12	0.00		
03992 VAL-U AUTO PARTS LLC*					
10-00258 02/04/10 PARTS FOR RDS/SANT/RECY/DPS	Open	3,773.14	0.00		
04012 XPRESS ELECTRONIC SERVICES*					
10-00401 02/23/10 PRINTER REPAIR / SERVICE	Open	279.00	0.00		
04049 SUSAN JACKSON					
10-00543 03/09/10 CONTRACTUAL REIMBURSEMENT - V	Open	245.00	0.00		
04059 THOMAS WILL					
10-00542 03/09/10 CONTRACTUAL REIMBURSEMENT	Open	92.04	0.00		
04075 BARBER CONSULTING SERVICES LLC					
09-03509 12/30/09 TIME MGMT CONFIG/ETHERNET LINE	Open	65.00	0.00		
10-00495 03/04/10 MARCH WEB PC SETUPS	Open	657.50	0.00		
		-----			
		722.50			
04080 WINNER FORD*					
09-03178 11/23/09 2010 FORD EXPLORER	Open	25,055.00	0.00		
04082 USA MOBILITY WIRELESS INC*					
10-00500 03/04/10 PAGER FOR DPW	Open	6.24	0.00		
04097 CINTAS FIRST AID AND SAFETY*					
10-00049 01/07/10 FIRST AID KIT SUPPLIES -DPW	Open	224.90	0.00		
10-00268 02/04/10 FIRST-AID KIT SUPPLIES-DPW	Open	304.50	0.00		
		-----			
		529.40			
04278 RICHARD SANDMAN, ESQ					
10-00370 02/19/10 CONFLICT PUBLIC DEF 2/16/10	Open	200.00	0.00		
04352 CARAHSOFT TECHNOLOGY CORP*					
10-00358 02/18/10 SYMC ENDPOINT PROTECTION	Open	681.75	0.00		

03/12/10  
10:20:56

Lower Township  
Bill List By Vendor Id

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Vendor # Name	Status	Amount	Void Amount	Contract	PO Type
PO # PO Date Description					
BAC TAX BAC TAX SERVICE CORP 10-00523 03/04/10 REFUND 1ST QTR 2010 TAX	Open	724.82	0.00		
BAILEYSU SUSAN D BAITLEY 10-00438 02/25/10 REIMB. BATTERY PACK	Open	10.31	0.00		
BARB BARBARAS SEA SHELL FLORIST* 10-00400 02/23/10 DOUGLASS MEMORIAL WREATH	Open	45.00	0.00		
BIGGS STEWART BIGGS 10-00522 03/04/10 REFUND 1ST QTR 2010 TAX	Open	465.57	0.00		
BOSNA KAREN MANETTE BOSNA 10-00445 02/26/10 YOGA CLASS INSTRUCTOR	Open	80.00	0.00		
MCAA MCAA OF NEW JERSEY 10-00295 02/08/10 DUES	Open	90.00	0.00		
MCMULLIN JOAN MCMULLIN 10-00582 03/10/10 JUDO REFUND FOR COLIN	Open	40.00	0.00		
NJPSAC NJPSAC 10-00242 02/03/10 ANNUAL DUES	Open	300.00	0.00		
PISTILLI ANTHONY PISTILLI 10-00485 03/04/10 SPAY/NEUTER PROGRAM	Open	35.00	0.00		
Total Purchase Orders: 118 Total P.O. Line Items: 255 Total List Amount: 335,403.44 Total Void Amount: 0.00					

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**Lower Township  
Bill List  
03/15/10**

<u>Vendor</u>	<u>PO #</u>	<u>Description</u>	<u>Check #</u>	<u>Check Date</u>	<u>Amount</u>
NJ Div of Motor Vehicles	10-00483	Registration of Vehicle	42007	03/03/10	60.00
					60.00
Total Manual Checks				\$	60.00
Total brought forward from computer generated bill list				\$	335,403.44
<b>TOTAL BILL LIST</b>				<b>\$</b>	<b><u>335,463.44</u></b>

I certify the foregoing to be a Resolution adopted by the Township Council on March 15, 2010.

  
 \_\_\_\_\_  
 Claudia R. Kammer, RMC, Township Clerk

	CONRAD	MAZUREK	DOUGLASS	LARE	BECK
MOTION		X			
SECOND			X		
AYES	X	X	X	X	X
NAYS					
ABSTAIN					
ABSENT					

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

RESOLUTION #2010-91

TITLE: RESOLUTION AMENDING THE ANNUAL COUNCIL MEETING SCHEDULE

WHEREAS, Resolution #2010-11 established the annual meeting schedule of the Township Council, and

WHEREAS, it has become necessary to revise the schedule for the first meeting in April due to a lack of quorum.

NOW, THEREFORE, BE IT RESOLVED by the Township Council that the regularly scheduled meeting for Monday, April 5, 2010 shall be changed to March 29, 2010.

FURTHER RESOLVED the Clerk shall publish a notice of the meeting date change in the Cape May Star & Wave.

I hereby certify the foregoing to be a resolution adopted by the Township Council at a meeting held on March 15, 2010.

*Claudia R. Kammer*  
Claudia R. Kammer, Township Clerk

	CONRAD	MAZUREK	DOUGLASS	LARE	BECK
MOTION		✓			
SECOND			X		
AYE	X	X	X	X	✓
NAY					
ABSTAIN					
ABSENT					

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

RESOLUTION #2010-92

TITLE: AUTHORIZATION FOR REFUND OF TAXES

WHEREAS, the Township Tax Collector has certified an overpayment due to the reasons listed below:  
and

WHEREAS, a refund has been requested.

NOW, THEREFORE BE IT RESOLVED, by the Township Council of the Township of Lower, County of Cape May, State of New Jersey that the CFO/Treasurer be and the same is authorized and directed to refund the overpayments according to the Tax Collector's certification on file with the CFO/Treasurer.

<u>Block</u>	<u>Lot</u>	<u>Refund To</u>	<u>Reason</u>	<u>Tax</u>
166	15	Stewart Biggs	Paid twice	465.57
636	10	BAC Tax Service	Paid twice	724.82

I hereby certify the foregoing to be a resolution adopted by the governing body at a meeting held on March 15, 2010.

*Claudia R. Kammer*  
 \_\_\_\_\_  
 Claudia R. Kammer, Township Clerk

	CONRAD	MAZUREK	DOUGLASS	LARE	BECK
MOTION		X			
SECOND			✓		
AYE	X	X	X	X	X
NAY					
ABSTAIN					
ABSENT					

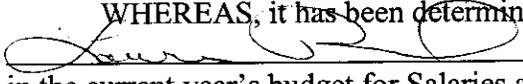
TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

RESOLUTION #2010-93

**TITLE: AUTHORIZATION FOR THE PAYOUT OF ACCUMULATED COMPENSATORY TIME**

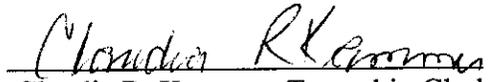
WHEREAS, the employees listed on the attached schedule have accrued compensatory time due from the Township and have requested payment for this time, and

WHEREAS, it is necessary to obtain authorization for any salary and wage disbursement to a Township employee that is not specified in the salary ordinance, and

WHEREAS, it has been determined by the Township Treasurer as evidenced by signature  that adequate funding is available for such payment in the current year's budget for Salaries and Wages.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the Township of Lower that payment to the individuals listed on the attached sheet in the amount of \$1756.00 is authorized and chargeable to the 2010 Budget account 0-01-25-240-122.

I hereby certify the foregoing to be a resolution adopted by the Township Council on March 15, 2010.

  
Claudia R. Kammer, Township Clerk

	CONRAD	MAZUREK	DOUGLASS	LARE	BECK
MOTION		X			
SECOND			X		
AYE	X	X	X	X	X
NAY					
ABSTAIN					
ABSENT					

Employee	Last Name	Hours	Hourly rate	Total
Michael	Szemcsak	50	35.12	1,756.00
				0.00
<b>Total Liability</b>				<b>1,756.00</b>

**TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY**

**RESOLUTION #2010-94**

**Title: Transfer of 2009 Appropriations**

WHEREAS, N.J.S.A. 40A: 4-59 provides for appropriation transfers during the first three months of the succeeding year when it has been determined that any appropriation reserve for the immediately preceding fiscal year is insufficient to pay the claims authorized or incurred during the preceding year, which were chargeable to said appropriation, and there is an excess in any appropriation reserve over and above the amount deemed to be necessary to fulfill its purpose.

NOW, THEREFORE BE IT RESOLVED by the Township Council of the Township of Lower, State of New Jersey that the following transfers, and totaling \$375,000.00 be made between the 2009 budget appropriation reserves.

<u>LINE ITEM</u>		<u>ACCT. NUMBER</u>	<u>TO</u>	<u>FROM</u>
Legal	OE	9-01-20-155-299	20,000.00	
Terminal Leave	S&W	9-01-30-415-199	355,000.00	
Manager	S&W	9-01-20-100-101		13,000.00
Clerk	S&W	9-01-20-120-101		11,000.00
Treasurer	S&W	9-01-20-130-103		14,000.00
Boca	S&W	9-01-22-195-101		7,000.00
Liability Insurance	OE	9-01-23-210-499		50,000.00
Health Insurance	OE	9-01-23-210-405		80,000.00
DPW	S&W	9-01-26-305-101		35,000.00
DPW	OE	9-01-26-305-299		14,000.00
Recreation	S&W	9-01-28-370-111		27,000.00
Summer Art	OE	9-01-28-370-257		7,000.00
Heating Oil	OE	9-01-31-447-299		25,000.00
Gasoline	OE	9-01-31-460-299		17,000.00
Tipping Fees	OE	9-01-32-465-611		75,000.00

375,000.00    375,000.00

**I hereby certify the foregoing to be a resolution adopted by the Township Council on March 15, 2010.**

  
 Claudia R. Kammer, RMC, Township Clerk

	CONRAD	MAZUREK	DOUGLASS	LARE	BECK
MOTION		X			
SECOND			X		
AYES	X	X	X	X	Y
NAYS					
ABSTAIN					
ABSENT					

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

RESOLUTION #2010-95

**TITLE: BID ACCEPTANCE AND CONTRACT AWARD FOR ROOFING & EXTERIOR REPAIRS OF PUBLIC SAFETY BUILDING**

WHEREAS, the Notice to Bidders for Roofing & Exterior Wall Repairs of Public Safety Building was advertised on January 14, 2010 and accepted on January 28, 2010 at 11:00 a.m., and

WHEREAS, four proposals were submitted and reviewed by the QPA, the Public Works Manager and the Engineer's office, and

WHEREAS, the lowest qualified bidder complied with the specifications and supplied all required certifications and bid documents and the CFO has determined sufficient funds are available in the budget as follows:

Budget Year & Appropriation: C-04-55-391-585, C-04-55-389-551, C-04-55-394-580

CFO Signature 

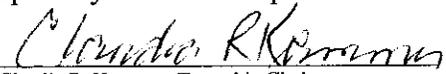
NOW, THEREFORE BE IT RESOLVED by the Township Council of the Township of Lower, County of Cape May, State of New Jersey that the contract for the above is hereby awarded to the lowest **qualified responsible** bidder as follows:

**AWARD TO: CAPRI CONSTRUCTION CO., INC.**

**TOTAL: \$141,355.00 (includes Base Bid - \$102,138 & Alternate Bid of \$39,217.00)**

BE IT FURTHER RESOLVED, the purchase order shall serve as the contract.

I hereby certify the foregoing resolution was adopted by the Township Council at a meeting held on

  
 Claudia R. Kammer, Township Clerk

	CONRAD	MAZUREK	DOUGLASS	LARE	BECK
MOTION		X			
SECOND			X		
AYE	X	X	X	X	X
NAY					
ABSTAIN					
ABSENT					

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

RESOLUTION NO. 2010-96

**TITLE: RESOLUTION AUTHORIZING SETTLEMENT OF LITIGATION KNOWN AS  
FONDACARO COMPANIES, INC. v. LOWER TOWNSHIP v. VAN-NOTE HARVEY  
ASSOCIATES AND BRUCE S. GRAHAM, P.E.**

WHEREAS, on or about August 5, 2004 the Township of Lower (the "Township") entered a Construction Agreement with Fondacaro Companies, Inc. ("Fondacaro") for the construction of recreational facilities at the site currently known as the Freeman S. Douglass, Jr. Memorial Park (the "Project"); and

WHEREAS, after numerous delays and other problems with the Project, the Township terminated its contract with Fondacaro on or about February 8, 2006; and

WHEREAS, the Township simultaneously submitted a claim to Fondacaro's bonding company, International Fidelity Insurance Company ("IFIC"); and

WHEREAS, on September 6, 2006 the Township and IFIC entered a takeover agreement whereby IFIC agreed to complete certain portions of the Project, which agreement also provided that the Township would retain the unpaid portion of the contract price totaling \$113,697.43 as compensation for damages incurred by the Township (the "Takeover Agreement"); and

WHEREAS, on or about October 30, 2006, Fondacaro filed a complaint captioned Fondacaro Companies, Inc. v. Township of Lower v. Van-Note Harvey Associates and Bruce S. Graham, P.E., Docket No. CPM-L-672-06 (the "Litigation"), in which Fondacaro sought to recover from the Township alleged damages totaling \$290,000.00; and

WHEREAS, the Township filed a counterclaim against Fondacaro along with a third party action against Van-Note Harvey Associates and Bruce S. Graham, P.E. asserting claims including professional malpractice and negligence (the "Van-Note Harvey Claims"); and

WHEREAS, the Van-Note Harvey claims were dismissed by the Superior Court on November 9, 2007 due to the Township's failure to file an affidavit of merit as required by N.J.S.A. 2A:53A-26; and

WHEREAS, by Stipulation filed December 4, 2008, the Township and Fondacaro agreed to dismiss the Litigation and to participate in binding arbitration to resolve the disputes between Fondacaro and the Township; and

WHEREAS, the Township subsequently moved to vacate the December 4, 2008 Stipulation and obtained an order reinstating the Litigation on March 6, 2009; and

WHEREAS, during the course of its trial preparation, in approximately August 2009, the Township's attorney discovered evidence indicating that Fondacaro overbilled the Township for electrical subcontractor costs associated with Change Order No. 2, however, the Township's subsequent motion to amend it's counterclaim to assert this claim against Fondacaro was denied by the Superior Court on December 18, 2009; and

WHEREAS, the Township has referred the issue of Fondacaro's apparent overbilling to the Cape May County Prosecutor; and

WHEREAS, on February 18, 2010, Fondacaro and IFIC agreed to a settlement of the Litigation by which the Township will exchange mutual releases with both IFIC and Fondacaro; and

WHEREAS, as a result of the settlement and exchange of mutual releases, IFIC and Fondacaro agreed to give up their claims against the Township and the Township will give up its claims against IFIC and Fondacaro; and

WHEREAS the proposed settlement does not provide for any payment to nor require any payment from the Township; and

WHEREAS, the proposed settlement preserves the Township's claims against third parties; and

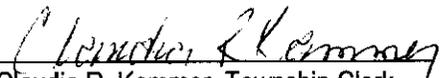
WHEREAS, since agreeing to settle the case in accordance with the attached Exhibit A, Fondacaro learned that the Township referred this matter to the Cape May County Prosecutor and stated that as long as any investigation is pending, it will not honor the settlement reached to resolve the Litigation; and

WHEREAS, notwithstanding Fondacaro's position, the Township asserts that there is a valid and binding settlement, subject only to approval by the Township Council; and

WHEREAS, Township Council has determined that the proposed settlement is in the best interest of the residents and taxpayers of the Township of Lower and wishes to approve same.

NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Lower, County of Cape May, State of New Jersey, that the Mayor is hereby authorized to execute the General Release with Fondacaro Companies, Inc. in the form attached hereto as EXHIBIT A along with the Settlement Agreement and Release with International Fidelity Insurance Company in the form attached hereto as EXHIBIT B.

I hereby certify this is the original Resolution adopted by the Township Council at a meeting held on March 15, 2010.

  
 Claudia R. Kammer, Township Clerk

	CONRAD	MAZUREK	DOUGLASS	LARE	BECK
MOTION		X			
SECOND			X		
AYE	X	X	X	X	X
NAY					
ABSTAIN					
ABSENT					

## EXHIBIT A

### GENERAL RELEASE

THIS GENERAL RELEASE, made effective as of February 19, 2010, is entered by FONDACARO COMPANIES, INC. ("Fondacaro") and GREGORY FONDACARO, individually ("Gregory Fondacaro"), their heirs successors, assignees, agents, servants; and the TOWNSHIP OF LOWER, its agents, servants and employees (the "Township"). Fondacaro, Gregory Fondacaro and the Township are referred to collectively as the "Parties." This General Release is the product of negotiation and compromise between the Parties.

1. The Parties have chosen to enter into this General Release in order to avoid further proceedings with respect to certain claims which have been made, or which could have been made, in the matter of Fondacaro Companies, Inc. v. Township of Lower v. Bruce Graham and Van Note-Harvey Associates, filed in the Superior Court of New Jersey, Cape May County, Docket No. CPM-L-672-06 (the "Litigation").

2. Gregory Fondacaro joins in this Agreement for the limited purpose of making certain representations and assurances as set forth below.

3. The Parties understand and agree that the each Party denies each and every allegation of wrongdoing made in the Litigation including but not limited to the Parties' claims of breach of contract.

4. The Parties understand and agree that entering into this General Release does not, in any way, constitute an admission of guilt, blame, wrongdoing, or non-compliance with any federal, state, or local law, rule, regulation, or public policy of any type or kind whatsoever. The Parties understand that the each Party has agreed to the terms of this General Release in order to avoid the continuing expense, distraction, and disruption caused by the Litigation.

5. Nothing contained in this document shall waive or in any way diminish the claims or other rights of the Township with respect to any unrelated third party including, without limitation, potential claims by the Township against Van Note-Harvey Associates, Bruce Graham and/or the Law Offices of Paul Baldini, Esquire.

6. In exchange for the release granted herein, Gregory Fondacaro:

a. represents that to the best of his knowledge, Fondacaro complied in all respects with the plans, orders, directives and instructions provided to Fondacaro Companies and/or Gregory Fondacaro by Bruce Graham, P.E. and/or Van Note-Harvey Associates with respect to construction of the Bennett's Crossing Recreation Complex in Lower Township, New Jersey (the "Project");

b. represents that to the best of his knowledge, all work completed by Fondacaro and its subcontractors, agents and representatives conformed in all respects with the construction plans, orders, directives and instructions provided by Bruce Graham, P.E. and/or Van Note-Harvey Associates with respect to the Project;

7. The Parties agree to the dismissal, with prejudice, of the Litigation and all claims included or eligible for inclusion therein, including, without limitation, any claim for fees and costs associated therewith;

8. The Parties do hereby unconditionally and irrevocably discharge and release one another of and from any and all claims, known or unknown, which the Parties have, has or may have had against one another as of the date of this General Release, including but not limited to those claims set forth in the Litigation or otherwise arising out of the Project.

9. The Parties acknowledge that no payment is required of either Party as a condition of this Release.

10. Fondacaro Companies, Inc. and Gregory Fondacaro, individually, agree that they will not talk about, discuss or consult with, advise, counsel or in any way otherwise cooperate with or assist any present or past employee, independent contractor or service provider of the Township in the pursuit or defense of legal or administrative action adverse to the Township, its employees, agents, servants, governing body, either individually or in their official capacity, including but not limited to future actions which may be brought between the Township and Bruce Graham, P.E., Van Note-Harvey Associates and/or the Law Offices of Paul Baldini, P.A. and Paul Baldini, Esquire, unless compelled to do so by court order or lawful subpoena.

11. Fondacaro and Gregory Fondacaro agree to notify counsel for the Township if either is contacted by any third party or directed by subpoena or court order to appear and testify regarding matters complained of in, or the settlement of, the Litigation.

12. This General Release is contingent upon approval by the Township Council of the Township of Lower once it is in receipt of this signed Release from Fondacaro and Gregory Fondacaro. Failure to receive those approvals renders this Agreement and Release null and void. Proof of approval of the General Release and settlement of this matter will come from counsel for Lower Township. Either party may void this agreement if said approval is not received within sixty (60) days.

13. Fondacaro Companies, Inc. and Gregory Fondacaro shall not directly or indirectly seek or accept any future employment or contracts with the Township of Lower, unless permitted by the governing body of the Township of Lower in writing.

14. This General Release sets forth the entire agreement between the Parties and fully supersedes any prior agreements or understandings between the Parties with respect to settlement of any claims made, or of any claims which could have been made, by the Parties against one

another for anything which has occurred up until the date of this Release. The Parties have not relied upon any representations, promises, or agreements of any kind made in connection with the decision to execute this General Release, except for those set forth in this General Release.

15. This General Release may not be modified, except upon express written consent of the Parties.

16. The Parties acknowledge and agree that they have been given a reasonable period of time to consider the terms of this General Release. Each Party has reviewed the terms of this General Release, and the effect of signing this General Release, with legal counsel of their own choosing. The Parties, in executing this General Release, acknowledges that they are satisfied with the services of their legal counsel.

17. This General Release shall be governed by the laws of the State of New Jersey and any action to enforce this Release shall be brought in the Superior Court of New Jersey, Cape May County.

18. In the event that any provision contained in this General Release is declared invalid, illegal, or unenforceable by any court of competent jurisdiction, and which cannot be modified to be enforceable, excluding the general release language, such provision shall immediately become null and void, leaving the remainder of this General Release in full force and effect.

19. The Parties shall have all rights at law equity to enforce the terms of this Release, including without limitation the right to obtain injunctive relief to compel compliance with this Release. In the event either Party initiates action to enforce this Release, the prevailing Party shall be entitled to reasonable attorney's fees and costs of suit in addition to other remedies available at law or equity.

20. Gregory Fondacaro and Fondacaro represent that this Release constitutes a valid and binding act of Fondacaro Companies, Inc.

ATTEST:

FONDACARO COMPANIES, INC.

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_, Secretary

BY: \_\_\_\_\_  
Gregory Fondacaro, President

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
GREGORY FONDACARO, Individually

ATTEST:

TOWNSHIP OF LOWER

\_\_\_\_\_  
Claudia R. Kammer, Township Clerk

BY: \_\_\_\_\_  
Michael E. Beck, Mayor

## EXHIBIT B

### SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Release"), made effective as of February 19, 2010, is entered by International Fidelity Insurance Company, Inc., its successors, assignees, agents, and servants ("IFIC"); and the Township of Lower, its successors, assignees, agents, and servants (the "Township"). IFIC and the Township are referred to individually as the "Party" and collectively as the "Parties." This General Release is the product of negotiation and compromise between the Parties.

WHEREAS, the Township entered into a contract (the "Contract") with Fondacaro Companies, Inc. ("Fondacaro") dated August 5, 2004 for the the construction of recreational facilities at the Bennett's Crossing Recreational Complex, Contract #1 Site Work & Storage Building, located in Lower Township, New Jersey (the "Project"); and

WHEREAS, IFIC issued Construction Performance Bond and Constuction Payment Bond No. PA0387478 (collectively, the "Bonds"), each in the penal sum of \$1,711,000.00 relating to the Project; and

WHEREAS, by letter dated February 8, 2006, the Township declared Fondacaro in default and terminated the Contract; and

WHEREAS, by separate letter dated February 8, 2006, the Township demanded IFIC's performance pursuant to the Construction Performance Bond; and

WHEREAS, the Township and IFIC entered into a Takeover Agreement dated September 6, 2006 (the "Takeover Agreement") by which the Township and IFIC resolved the Township's claims under the Construction Performance Bond, except for claims regarding "drainage, grading, sod or other problems upon or between the athletic fields (or areas not requested to be

performed under b above),” as more specifically set forth in the Takeover Agreement (the “Reserved Claims”); and

WHEREAS, subsequent to execution of the Takeover Agreement, Fondacaro initiated litigation entitled Fondacaro Companies, Inc. v. Township of Lower v. Van Note-Harvey Associates, Inc. and Bruce Graham, P.E., Superior Court of New Jersey, Cape May County, Docket No. CPM-L-672-06 (the “Litigation”); and

WHEREAS, the Township has alleged and IFIC has denied that IFIC has liability under the Contract Performance Bond on account of the Reserved Claims; and

WHEREAS, the Parties have chosen to enter into this Release in order to avoid further disputes regarding IFIC’s obligations under the Bonds.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, IFIC and the Township agree as follows:

1. The Parties do hereby unconditionally and irrevocably discharge and release one another of and from any and all claims, demands, lawsuits and/or causes of action, known or unknown, which either of the Parties have or may have had against one another as of the date of this Release relating to the Project, the Contract and/or otherwise arising out of or relating to the Bonds.

2. The Parties acknowledge that no payment is required of either Party as a condition of this Release; provided that the mutual releases granted hereunder shall be effective only upon the Township’s receipt of a release from Fondacaro along with Fondacaro’s dismissal with prejudice of the Litigation.

3. The Township shall deliver to IFIC with the fully executed original of this Release the original Bonds issued by IFIC for the Project. The Township hereby releases and

discharges IFIC from any and all liability to the Township and/or to third parties under the Bonds.

4. This Release does not, in any way, constitute an admission of guilt, blame, wrongdoing, or non-compliance with any federal, state, or local law, rule, regulation, or public policy of any type or kind whatsoever. The Parties understand that each Party has agreed to the terms of this Release in order to avoid the expense, distraction, and disruption caused by proceedings to enforce the Parties' rights under the Takeover Agreement, the Contract and/or under the Bonds.

5. Nothing contained in this document shall waive or in any way diminish the claims or other rights of the Township with respect to any third party including, without limitation, potential claims by the Township against Van Note-Harvey Associates, Bruce Graham and/or the Law Offices of Paul Baldini, Esquire.

6. IFIC and its agents, employees, attorneys and assigns agree that it will not talk about, discuss or consult with, advise, counsel or in any way otherwise cooperate with or assist any present or past employee, independent contractor or service provider of the Township in the pursuit or defense of legal or administrative action adverse to the Township pertaining to the subject matter of the Litigation, its employees, agents, servants, governing body, either individually or in their official capacity, including but not limited to future actions which may be brought between the Township and Bruce Graham, P.E., Van Note-Harvey Associates and/or the Law Offices of Paul Baldini, P.A. and Paul Baldini, Esquire, unless compelled to do so by court order or lawful subpoena.

7. IFIC shall notify counsel for the Township if it (or any agent) is contacted by any third party or directed by subpoena or court order to appear and testify regarding the Project or the Bonds.

8. This Release is contingent upon approval by the Township Council of the Township of Lower once it is in receipt of this signed Release from IFIC. Failure to receive those approvals renders this Agreement and Release null and void. Proof of approval of the Release and settlement of this matter will come from counsel for Lower Township.

9. This Release sets forth the entire agreement between the Parties and fully supersedes any prior agreements or understandings between the Parties with respect to settlement of any claims made, or of any claims which could have been made, by the Parties against one another for anything which has occurred up until the date of this Release. The Parties have not relied upon any representations, promises, or agreements of any kind made in connection with the decision to execute this General Release, except for those set forth in this General Release.

10. This General Release may not be modified, except upon express written consent of the the parties.

11. The Parties acknowledge and agree that they have been given a reasonable period of time to consider the terms of this Release. Each Party has reviewed the terms of this General Release, and the effect of signing this Release, with legal counsel of their own choosing. The Parties, in executing this Release, acknowledge that they are satisfied with the services of their legal counsel.

12. This Release shall be governed by the laws of the State of New Jersey and any action to enforce this Release shall be brought in the Superior Court of New Jersey, Cape May County.

13. In the event that any provision contained in this Release is declared invalid, illegal, or unenforceable by any court of competent jurisdiction, and which cannot be modified to be enforceable, excluding the release language, such provision shall immediately become null and void, leaving the remainder of this Release in full force and effect.

14. The Parties shall have all rights at law and in equity to enforce the terms of this Release, including without limitation the right to obtain injunctive relief to compel compliance with this Release. In the event either Party initiates action to enforce this Release, the prevailing Party shall be entitled to reasonable attorneys fees and costs of suit in addition to other remedies available at law or equity.

15. IFIC represents that this Release has been approved as required by its governing documents and constitutes a valid and binding act of International Fidelity Insurance Company.

ATTEST:

INTERNATIONAL FIDELITY  
INSURANCE COMPANY

\_\_\_\_\_  
PRINT NAME: \_\_\_\_\_, Secretary

BY: \_\_\_\_\_  
PRINT NAME:  
PRINT TITLE:

ATTEST:

TOWNSHIP OF LOWER

\_\_\_\_\_  
Claudia R. Kammer, Township Clerk

BY: \_\_\_\_\_  
Michael E. Beck, Mayor

TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY

RESOLUTION #2010-97

TITLE; ISSUANCE OF 2010 LIMOUSINE & OPERATOR'S LICENSES

WHEREAS, an application has been submitted by Danette E. Quinn t/a Shore Limousine pursuant to Ord. #2000-4 for four Limousine & Operator's Licenses, and

WHEREAS, the applicants submitted the appropriate fees, provided the required documentation, and the Police have reviewed and approved the application packet.

NOW, THEREFORE BE IT RESOLVED, the Clerk is hereby authorized to issue the following:

**SHORE LIMOUSINE**

<u>License Type</u>	<u>Description</u>
Operators	Danette E. Quinn & Paul V. Quinn
Limousine	2007 Lincoln Town Car - VIN 1L1FM88W27Y616586 2000 Ford E450 - VIN 1FDXE45F2YHA14558 1998 Lincoln Town Car - 1LNFM81W4W4684783

BE IT FURTHER RESOLVED, all licenses shall expire on December 31, 2010

I hereby certify the foregoing to be a resolution adopted by the Township Council on March 15, 2010.

  
\_\_\_\_\_  
Claudia R. Kammer, Township Clerk

	CONRAD	MAZUREK	DOUGLASS	LARE	BECK
MOTION		X			
SECOND			X		
AYE	X	X	X	X	X
NAY					
ABSTAIN					
ABSENT					

**TOWNSHIP OF LOWER, COUNTY OF CAPE MAY, STATE OF NEW JERSEY**

**RESOLUTION # 2010-98**

**TITLE: A RESOLUTION PROVIDING FOR A MEETING NOT OPEN TO THE PUBLIC IN ACCORDANCE WITH THE PROVISIONS OF THE NEW JERSEY OPEN PUBLIC MEETINGS ACT, N.J.S.A. 10:4-12."**

WHEREAS, the Township Council of the Township of Lower is subject to certain requirements of the Open Public Meetings Act, N.J.S.A 10:4-6, et seq., and

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-12, provides that an Executive Session, not open to the public, may be held for certain specified purposes when authorized by Resolution, and

WHEREAS, it is necessary for the Township Council of the Township of Lower to discuss in a session not open to the public certain matters relating to the item or items authorized by N.J.S.A. 10:4-12b and designated below:

- (1) Matters Required by Law to be Confidential: Any matter which, by express provision of Federal law or State statute or rule of court shall be rendered confidential or excluded from the provisions of the Open Public Meetings Act.
- (2) Matters Where the Release of Information Would Impair the Right to Receive Funds: Any matter in which the release of information would impair a right to receive funds from the Government of the United States.
- (3) Matters Involving Individual Privacy: Any material the disclosure of which constitutes an unwarranted invasion of individual privacy such as any records, data, reports, recommendations, or other personal material of any educational, training, social service, medical, health, custodial, child protection, rehabilitation, legal defense, welfare, housing, relocation, insurance and similar program or institution operated by a public body pertaining to any specific individual admitted to or served by such institution or program, including but not limited to information, relative to the individual's personal and family circumstances, and any material pertaining to admission, discharge, treatment, progress or condition of any individual, unless the individual concerned (or, in the case of a minor or incompetent, his guardian) shall request in writing that the same be disclosed publicly.
- (4) Matters Relating to Collective Bargaining Agreement: Any collective bargaining agreement, or the terms and conditions which are proposed for inclusion in any collective bargaining agreement, including the negotiation of the terms and conditions thereof with employees or representatives of employees of the public body.
- (5) Matters Relating to the Purchase, Lease or Acquisition of Real Property or the Investment of Public Funds: Any matter involving the purchase, lease or acquisition of real property with public funds, the setting of banking rates or investment of public funds, where it could adversely affect the public interest if discussion of such matters were disclosed.
- (6) Matters relating to Public Safety and Property: Any tactics and techniques utilized in protecting the safety and property of the public, provided that their disclosure could impair such protection. Any investigations of violations of possible violations of the law.
- (7) Matters Relating to Litigation, Negotiations and the Attorney-Client Privilege: any pending or anticipated litigation or contract negotiation in which the public body is, or may become a party. Any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer.

\_\_\_\_\_ (8) Matters Relating to the Employment Relationship: Any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of the performance of promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the public body, unless all the individual employees or appointees whose rights could be adversely affected request in writing that such matter or matters be discussed at a public meeting.

\_\_\_\_\_ (9) Matters Relating to the Potential Imposition of a Penalty: Any deliberations of a public body occurring after a public hearing that may result in the imposition of a specific civil penalty upon the responding party or the suspension or loss of a license or permit belonging to the responding party bears responsibility.

NOW, THEREFORE, BE IT RESOLVED by the Township council of the Township of Lower, assembled in public session on March 15, 2010 that an Executive Session closed to the public shall be held on this date at approximately 8:12 P.M. in the Conference Room of the Township Hall, 2600 Bayshore Road, Villas for the discussion of matters relating to the specific items designated above.

It is anticipated that the deliberations conducted in closed session may be disclosed to the public upon the determination of the Township Council that the public interest will no longer be served by such confidentiality.

I hereby certify the foregoing to be a resolution adopted by the Township Council on March 15, 2010.

Claudia R. Kammer  
 Claudia R. Kammer, Township Clerk

	CONRAD	MAZUREK	DOUGLASS	LARE	BECK
MOTION	X				
SECOND			X		
AYE	X	X	X	X	Y
NAY					
ABSTAIN					
ABSENT					