

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This **SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE** (this “Agreement”) is made and entered into, by and among **Brad Geuke** (“Geuke”), **Energex Enterprises, Inc.**, a Colorado corporation (“Energex Enterprises”), [**Energex Corp.**] (“Energex”), located at 39583 Rangeview Drive, Ault, Colorado 80610, **on behalf of any and all past and present parents, affiliates, subsidiary and successor corporations** (collectively with Geuke, Energex Enterprises and Energex, the “Plaintiffs”), and **Anthony Doors, Inc. d/b/a Anthony International, Anthony Doors, Anthony, Inc. a/k/a Anthony Manufacturing Co., Inc.** (collectively, “Anthony”) located at 12812 Arroyo Street, Sylmar, California 91342 **on behalf of any and all past and present parents, affiliates, subsidiary and successor corporations** (collectively, the “Defendants”, and together with Plaintiffs, the “Parties”).

WHEREAS, Energex Enterprises and Anthony are parties to a Confidential Disclosure Agreement dated February 29, 2000 (“Disclosure Agreement”);

WHEREAS, Geuke is the President and sole shareholder of Energex Enterprises and Energex;

WHEREAS, Energex Enterprises commenced an action in the United States District Court for the District of Colorado (the “Court”), captioned Energex Enterprises, Inc. v. Anthony Doors, Inc. d/b/a Anthony International, Anthony Doors, Anthony, Inc. a/k/a Anthony Manufacturing Co., Inc., Case No. 02-K-397, alleging, *inter alia*, breach of the Disclosure Agreement, wrongful interference of business opportunity, bad faith breach, misappropriation of confidential information, and unfair competition (the “Civil Action”);

WHEREAS, the Defendants have denied the allegations and any liability in the Civil Action; and

WHEREAS, Plaintiffs and Defendants desire by this Agreement to settle fully all differences, disputes and claims that may exist between them.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Termination of Prior Agreements and Understandings.** The Parties agree that any prior agreements and understandings between any of the Plaintiffs, on the one hand, and any of the Defendants, on the other (other than the Co-Development Agreement to be entered into by and among the Parties pursuant to Paragraph 8 hereof), whether oral or written and of whatever nature, including, without limitation, the Disclosure Agreement, are hereby canceled, terminated and superseded by this Agreement and shall be of no further force or effect.

2. **Special Payment.** Subject to the terms and conditions hereof, Anthony shall cause to be paid to Energex an amount equal to \$300,000.00 (three hundred thousand dollars) within three (3) business days of the Effective Date. Such payment shall be referred to

herein as the “**Special Payment.**” Although the Defendants deny any liability with regard to the Plaintiffs’ Claims, as defined in Paragraph 4 hereof, the Plaintiffs and the Defendants agree that this Special Payment represents the full and complete settlement of all of the Plaintiffs’ Claims. Energex is accepting the Special Payment in full and complete satisfaction of all of the Plaintiffs’ Claims against the Defendants, and Energex further acknowledges the sufficiency of the consideration for this Agreement generally and specifically for the release of any Plaintiffs’ Claims in accordance with Paragraph 4. Energex’s right to the Special Payment hereof shall be cancelled and Energex shall be required to return the Special Payment in the event that any of the Plaintiffs breaches in any respect any of the provisions and representations contained in this Agreement.

3. **No Admissions.** This Agreement is being executed for settlement purposes only and does not constitute an admission of liability by the Parties.

4. **General Release by the Plaintiffs.**

(a) In consideration of this Agreement provided to the Plaintiffs pursuant to this Agreement, the Plaintiffs, individually and collectively, hereby voluntarily, irrevocably and unconditionally release, waive and forever discharge the Defendants, individually and collectively, and all of their predecessors, successors, assigns, and their past, present, and future employees, agents independent contractors, attorneys, accountants, representatives, successors, heirs, and assigns (the “Defendant Releasees”) from, any and all actions, claims, debts, demands, causes of action, complaints, suits, dues, sums of money, contracts, agreements, judgments, liabilities, damages, rights, remedies, obligations, costs, disbursements, fees, attorney’s fees, expenses, and injuries whatsoever kind or character, in law or equity, suspected or unsuspected, past or present, that they have ever had, may now have, or may later assert against the Defendant Releasees from the beginning of time to the Effective Date hereof (as defined in Paragraph 8) (hereinafter collectively referred to as the “Plaintiffs’ Claims”) including but not limited to (i) all of the claims asserted by Plaintiffs in the Civil Action; and (ii) any and all of the Plaintiffs’ Claims arising out of or related to any contract, any and all other federal, state or local constitutions, statutes, rules or regulations, or under any common law right of any kind whatsoever, or under the laws of any country or political subdivision.

(b) Plaintiffs further waive and relinquish any rights and benefits which they have or may have under California Civil Code § 1542 to the fullest extent that they may lawfully waive all such rights and benefits pertaining to the subject matter of this Agreement. Civil Code § 1542 provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Plaintiffs acknowledge that they are aware that they may later discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, but it is their intention to fully and finally forever settle and release any and

all matters, disputes, and differences, known or unknown, suspected and unsuspected, which now exist, may later exist or may previously have existed between any of the Plaintiffs and any of the Defendants, and that in furtherance of this intention, the releases given in this Agreement shall be and remain in effect as full and complete general releases notwithstanding discovery or existence of any such additional or different facts.

(c) To the fullest extent permitted by law, the Plaintiffs represent, warrant and agree that they shall not commence, lodge or pursue any formal or informal proceeding, charge or complaint in any court, before any federal, state or local agency or in any other forum arising out of or related to the subject matter of the Plaintiffs' Claims. The Plaintiffs hereby represent and warrant that, other than the Civil Action, they have not commenced, filed or served any complaint, claim, charge, action or proceeding against any of the Defendant Releasees in any jurisdiction or forum in the United States or in any other country. The Plaintiffs further represent and warrant that they have not in the past and will not in the future assign any of the Plaintiffs' Claims to any person, corporation or other entity.

(d) Execution of this Agreement by Energex, Energex Enterprises and Geuke operates as a complete bar and defense against any and all of the Plaintiffs' Claims against the Defendant Releasees. If the Plaintiffs should hereafter make any of the Plaintiffs' Claims in any charge, complaint, action, claim or proceeding against any of the Defendant Releasees, this Agreement may be raised as and shall constitute a complete bar to any such charge, complaint, action, claim or proceeding and the Defendant Releasees shall be entitled to and shall recover from the Plaintiffs all costs and expenses incurred, including attorneys' fees, in defending against any such charge, complaint, action, claim or proceeding.

5. Release by the Defendants.

(a) In consideration of this Agreement and other good and valuable consideration provided to the Defendants pursuant to this Agreement, the Defendants, individually and collectively, hereby voluntarily, irrevocably and unconditionally release, waive and forever discharge the Plaintiffs, individually and collectively, and all of their predecessors, successors, assigns, and their past, present, and future employees, agents independent contractors, attorneys, accountants, representatives, successors, heirs, and assigns (the "Plaintiff Releasees") from, any and all actions, claims, debts, demands, causes of action, complaints, suits, dues, sums of money, contracts, agreements, judgments, liabilities, damages, rights, remedies, obligations, costs, disbursements, fees, attorney's fees, expenses, and injuries whatsoever kind or character, in law or equity, suspected or unsuspected, past or present, that they have ever had, may now have, or may later assert against the Plaintiff Releasees from the beginning of time to the Effective Date hereof (as defined in Paragraph 8) (hereinafter collectively referred to as the "Defendant' Claims") including but not limited to any and all Defendant's Claims arising out of or related to any contract, any and all other federal, state or local constitutions, statutes, rules or regulations, or under any common law right of any kind whatsoever, or under the laws of any country or political subdivision.

(b) Defendants further waive and relinquish any rights and benefits which they have or may have under California Civil Code § 1542 to the fullest extent that they may lawfully

waive all such rights and benefits pertaining to the subject matter of this Agreement. Civil Code § 1542 provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Defendants acknowledge that they are aware that they may later discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, but it is their intention to fully and finally forever settle and release any and all matters, disputes, and differences, known or unknown, suspected and unsuspected, which now exist, may later exist or may previously have existed between any of the Defendants and any of the Plaintiffs, and that in furtherance of this intention, the releases given in this Agreement shall be and remain in effect as full and complete general releases notwithstanding discovery or existence of any such additional or different facts.

(c) To the fullest extent permitted by law, the Defendants represent, warrant and agree that they shall not commence, lodge or pursue any formal or informal proceeding, charge or complaint in any court, before any federal, state or local agency or in any other forum arising out of or related to the subject matter of the Defendant's Claims. The Defendants hereby represent and warrant that they have not commenced, filed or served any complaint, claim, charge, action or proceeding against any of the Plaintiff Releasees in any jurisdiction or forum in the United States or in any other country. The Defendants further represent and warrant that they have not in the past and will not in the future assign any of the Defendant's Claims to any person, corporation or other entity.

(d) Execution of this Agreement by Anthony operates as a complete bar and defense against any and all of the Defendant's Claims against the Plaintiff Releasees. If the Defendants should hereafter make any of the Defendant's Claims in any charge, complaint, action, claim or proceeding against any of the Plaintiff Releasees, this Agreement may be raised as and shall constitute a complete bar to any such charge, complaint, action, claim or proceeding and the Plaintiff Releasees shall be entitled to and shall recover from the Defendants all costs and expenses incurred, including attorneys' fees, in defending against any such charge, complaint, action, claim or proceeding.

6. Remedies for Breach.

(a) In the event that any Party breaches, violates, fails or refuses to comply with any of the provisions, terms or conditions or any warranties or representations of this Agreement (the "Breach"), in its sole discretion the non-breaching Party or Parties shall be entitled to recover against the breaching Party damages, including costs, expenses and reasonable attorneys' fees, accruing to the non-breaching Party or Parties as a consequence of the Breach.

(b) The General Release by the Plaintiffs and the Defendants and other terms and conditions of this Agreement shall remain in full force and effect regardless of the remedies and/or damages available under this Paragraph 6.

7. **Indemnification by Energex.** Energex hereby agrees to indemnify and hold harmless each of the Defendant Releasees from and against any and all costs, losses, claims, actions, demands, damages and liabilities (including attorneys' fees and disbursements) incurred by such person or entity relating to claims arising out of the Disclosure Agreement made by any person, including but not limited to the defendants party to the case entitled Energex Enterprises, Inc., a Colorado corporation, v. Aztec Energy Systems, Inc., an Arizona corporation; Door Miser, LLC, an Arizona limited liability company; John A. Bunch, Jr., and Kelli A. Bunch, husband and wife; John Does and Jane Does I-V; ABC Corporations I-V; XYZ Partnerships I-V, which was commenced in the Superior Court of the State of Arizona in and for the County of Maricopa, against any of the Defendant Releasees.

8. **Effective Date.** This Agreement shall automatically be effective and enforceable following the occurrence of all of the following events (the date on which this Agreement becomes effective, the "Effective Date"):

(a) This Agreement shall have been executed by each of the Parties hereto.

(b) The Civil Action shall have been dismissed with prejudice, pursuant to the filing of a Stipulation of Dismissal With Prejudice, in the form of Exhibit A attached hereto, duly executed and entered by the Court.

(c) The Parties shall have entered into that certain Co-Development Agreement, in the form of Exhibit B attached hereto (the "Co-Development Agreement").

9. **Certain Representations and Warranties of the Plaintiffs.**

(a) The Plaintiffs hereby represent and warrant to the Defendants that (i) the execution, delivery and performance of this Agreement (A) will not violate the provisions of any of their applicable certificates of incorporation or by-laws or other constituent documents, (B) will not violate any provision of any applicable laws, statutes, rules, regulations, instruments, orders, judgments or decrees to which any of the Plaintiffs is subject to or any other agreement or instrument to which any of the Plaintiffs is a party and (C) will not require any filing with, or consent or approval of, or the giving of any notice to, any governmental authority; (ii) upon the execution and delivery of this Agreement by the Defendants, this Agreement shall be the valid and binding obligation of the Plaintiffs, enforceable in accordance with its terms; (iii) the Plaintiffs have not assigned or given any rights to any other person with respect to the Plaintiffs' Claims; and (iv) no third party has taken any action or omitted to take any action based on circumstances underlying any of the Plaintiffs' Claims. If any of the foregoing representations are breached, the Plaintiffs shall be liable for any damages arising from such breach and shall indemnify and hold harmless the Defendants and the Defendant Releasees for any claims, damages, losses, or liabilities asserted by any third party.

(b) The Defendants hereby represent and warrant to the Plaintiffs that (i) the execution, delivery and performance of this Agreement (A) will not violate the provisions of any of their applicable certificates of incorporation or by-laws or other constituent documents, (B) will not violate any provision of any applicable laws, statutes, rules, regulations, instruments, orders, judgments or decrees to which any of the Defendants is subject to or any other agreement or instrument to which any of the Defendants is a party and (C) will not require any filing with, or consent or approval of, or the giving of any notice to, any governmental authority; (ii) upon the execution and delivery of this Agreement by the Plaintiffs, this Agreement shall be the valid and binding obligation of the Defendants, enforceable in accordance with its terms; (iii) the Defendants have not assigned or given any rights to any other person with respect to the Defendant's Claims; and (iv) no third party has taken any action or omitted to take any action based on circumstances underlying any of the Defendant's Claims. If any of the foregoing representations are breached, the Defendants shall be liable for any damages arising from such breach and shall indemnify and hold harmless the Plaintiffs and the Plaintiff Releasees for any claims, damages, losses, or liabilities asserted by any third party.

10. **Notices.** All notices and other communications required or permitted hereunder shall be given in writing by hand delivery, by facsimile, or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party to receive the same at its respective address set forth below, or at such other address as may from time to time be designated by such Party to the other Party hereunder in accordance with this Paragraph 10:

If to Anthony:

Anthony International
12812 Arroyo Street
San Fernando, California 91362

Attn.: Jeff Clark
Facsimile: _____

With a copy to:

Kaye Scholer LLP
425 Park Avenue
New York, New York 10022
Attn.: John Geelan, Esq.
Facsimile: (212) 836-8689

If to Energex:

[Energex Corp.]
[Address]

Attn.: _____
Facsimile: _____

With a copy to:

Attn.: _____
Facsimile: _____

All notices shall be effective when received. A notice is considered received if a written confirmation of receipt appears thereon or there exists a written facsimile confirmation. Any Party may by notice to the other Parties designate a new address for notices, such new address to be effective ten (10) days after receipt of designation.

11. **Confidentiality.**

(a) The Parties recognize that in the course of performance of this Agreement, any of them may make disclosures of information to the others about the disclosing Party's business or activities which such Party considers proprietary and confidential including, without limitation, intellectual property, patents, trade secrets, marketing and business plans, customer lists, and information concerning the operations of the parties (all of such proprietary and confidential information is hereinafter referred to as "Confidential Information"). The Party who receives any Confidential Information (the "Receiving Party") from a disclosing party (the "Disclosing Party") agrees to maintain a confidential status for such Confidential Information, not to use any such Confidential Information for any purpose other than the purpose for which it was originally disclosed to the Receiving Party and not to disclose any such Confidential Information to any third party, unless such information:

(1) is or has become available to the public from a source other than the Receiving Party;

(2) was already known to the Receiving Party from sources other than the Disclosing Party at the time it was disclosed to the Receiving Party and was not obtained by the Receiving Party in violation of a confidentiality or other similar obligation of such source that is known to the Receiving Party;

(3) is required to be disclosed by law, regulation or legal process, and only after compliance with Paragraph 11(b); or

(4) was developed independently by the Receiving Party.

(b) The Parties acknowledge that they may be requested or required (by applicable law or regulation, oral questions, interrogatories, requests for information or documents, subpoena or similar process) to disclose Confidential Information. In the event that a Receiving Party or any of its representatives are so requested or required to disclose any Confidential Information, the Receiving Party shall notify the Disclosing Party (unless prohibited

by law) so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy or, in the Disclosing Party's sole discretion, waive compliance with the terms of this Section 11 (and if the Disclosing Party seeks such an order, the Receiving Party shall provide such cooperation as the Disclosing Party may reasonably request). In the event that no such protective order or other remedy is obtained or that the Disclosing Party waives compliance with the terms of this Section 11, the Receiving Party and its representatives shall furnish only that portion of Confidential Information which the Receiving Party is advised by counsel is legally required to be disclosed and give the Disclosing Party written notice (unless prohibited by law) of the Confidential Information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Confidential Information.

(c) The Parties acknowledge and agree that the existence of this Agreement and its terms and conditions and the compromise negotiations which concluded with this Agreement shall also be deemed to be "Confidential Information" for purposes of this Agreement.

(d) The provisions of this Section 11 shall survive the termination of this Agreement for any reason whatsoever. Upon such termination, the parties shall return or destroy any Confidential Information which may have been transmitted from another party, as well as any copy or other reproduction, including, without limitation, electronic data reproductions or representations.

12. **Arbitration.** If any dispute arises out of this Agreement, the Parties will settle such dispute exclusively by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date of commencement of the arbitration. Arbitration may be commenced by written notice given by any of the Parties to the others. The arbitration will be held in Denver, Colorado before a panel of arbitrators appointed by the American Arbitration Association. Judgment upon the award made in the arbitration may be entered by any court having jurisdiction. Each of the Plaintiffs and the Defendants will bear its or his own fees and expenses incurred in connection with the arbitration and shall equally share the fees and expenses of the arbitrators.

13. **Miscellaneous Provisions.**

(a) Except as set forth in this Agreement, neither Plaintiffs nor the Defendants are relying on any representations made by the other (including any of the Defendant Releasees and Plaintiff Releasees, respectively) regarding this Agreement or the implications thereof. No oral understanding, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

(b) Failure to enforce any provision of this Agreement shall not prejudice or constitute a waiver of the enforcement of that provision in any other instance.

(c) Should any provision of this Agreement be held invalid, illegal or unenforceable, it shall be deemed to be modified so that its purpose can lawfully be effectuated and the balance of this Agreement shall remain in full force and effect.

(d) The Parties shall not comment publicly on the resolution of the Civil Action. Except as may be required by law, the Parties shall keep strictly confidential the compromise negotiations which concluded with this Agreement, the circumstances giving rise to it and the terms of this Agreement.

(e) The Parties shall be solely responsible for their respective attorneys' fees and other related costs associated with the Civil Action and the settlement thereof.

(f) Neither Party may assign any of its rights under this Agreement without obtaining the prior written consent of the other Parties.

(g) This Agreement shall extend to, be binding upon, and inure to the benefit of the Parties and their respective successors, heirs and assigns.

(h) This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

(i) This Agreement may be executed in any number of counterparts each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same agreement.

(j) This Agreement contains the entire agreement between the Parties and supercedes any and all prior agreements, arrangements, negotiations, discussions or understandings between or among any of the Parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the Parties have hereunto set their hand and executed this Agreement as of the day and year first set forth above.

Brad Geuke

ENERGEX ENTERPRISES, INC.

By: _____
Name:
Title:

[ENERGEX CORP.]

By: _____
Name:
Title:

ANTHONY DOORS, INC.

By: _____
Name:
Title:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Judge John L. Kane

Case No. 02-K-0397

ENERGEX ENTERPRISES, INC.	)	
	)	
Plaintiff	)	
	)	
v.	)	STIPULATION OF
	)	DISMISSAL
	)	<u>WITH PREJUDICE</u>
ANTHONY DOORS, IND. d/b/a	)	
ANTHONY INTERNATIONAL,	)	
ANTHONY DOORS, ANTHONY, INC.	)	Hon. John L. Kane
a/k/a ANTHONY MANUFACTURING)	)	
CO, INC.,	)	
	)	
Defendant	)	

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the Parties in the above-captioned action, that this action be and hereby is dismissed in its entirety with prejudice. It is further agreed that the Parties shall be solely responsible for their respective attorneys fees and other related costs associated with the above-referenced action and the settlement thereof.

Dated: March __, 2004

JAMES K. KREUTZ & ASSOCIATES, P.C.

APPEL & LUCAS, P.C.

By: _____
James K. Kreutz, Reg. No. 4752
5655 So. Yosemite Street, #200
Greenwood Village, CO 80111
Tel: (303) 779-8224
Attorney for Plaintiff

By: _____
Garry R. Appel
1917 Market Street, Suite A
Denver, CO 80202
Tel: (303) 297-9800
Attorney for Defendant

IT IS HEREBY SO ORDERED:

Hon: John L. Kane

Date

EXHIBIT B

[Form of Co-Development Agreement]