

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release ("Agreement"), dated this 16th day of August, 2013, is made by and between MICHAEL GIANNONE (herein referred to as "Employee"), and THE TOWNSHIP OF CHATHAM and its affiliates, members, subsidiaries, insurers, attorneys, and current and former employees, officers, managers, councils, boards, trustees, directors, pension plans, employee benefit plans, health plans, severance plans, insurers, agents, representatives, and successors and assigns (hereinafter collectively referred to as "Employer"), on the other hand (collectively, the "Parties").

WHEREAS, Employee, a former police officer with Employer, has asserted certain claims against Employer arising out of his employment with Employer; and

WHEREAS, the parties have reached an agreement to settle, compromise and resolve all claims Employee has, had or may have against Employer up to the date this Agreement is signed; and

WHEREAS, the terms of this Agreement are the products of mutual negotiation and compromise between Employee and Employer; and

WHEREAS, the meaning, effect and terms of this Agreement have been fully explained to Employee who has had the advice of counsel of his own choosing and who understands this Agreement; and

WHEREAS, Employee knowingly, freely and voluntarily enters into this Agreement.

NOW, THEREFORE, Employee and Employer, for the full and sufficient consideration set forth below, and for other good and valuable consideration and the mutual promises and covenants contained herein, the receipt and sufficiency of which the parties acknowledge, the parties do hereby agree as follows:

1. **Consideration.** Upon the return of an executed original copy of this Agreement signed by Employee, Employer agrees to pay the total sum of Two Hundred Thousand Dollars (\$200,000) (the "Settlement Payment") as follows:

a) Employer will deliver to Employee's Attorney a check made payable to "Michael Giannone" in the gross amount of \$100,000.00 from which the required FICA Medicare tax, income tax, and other required withholding applicable to wages have been withheld, and for which an IRS Form W-2 will be issued to Employee; and

b) Employer, through its insurance carrier, will deliver to Employee's Attorney a check made payable to "Michael Giannone" in the amount of \$100,000.00, for which a IRS Form 1099-MISC will be issued to Employee. Employee represents that he is accepting this payment as compensation for his personal physical injuries and alleged tort claims.

Employee understands and agrees that he would not receive the payments and benefits specified in this paragraph except for the execution of this Agreement and the fulfillment of the promises and conditions contained in the Agreement.

2. **Tax Consequences.** Employer make no representations regarding the federal, state or local tax consequences of the Settlement Payment and shall not be responsible for any tax liability, interest or penalty incurred by Employee which in any way arises out of or is related to the Settlement Payment. In the event the Internal Revenue Service, or any other state or local taxing entity, or any court or other tribunal of competent jurisdiction, determines that all or part of the Settlement Payment is remuneration for which any taxes are due and owing by Employee or Employer, Employee shall be solely responsible for the payment of such taxes. Employee agrees not to make a claim against Employer for the payment of any such taxes, or for any related interest or penalties. Employee also agrees to indemnify and hold Employer harmless for any amounts paid, including, but not limited to, interest and penalties, in connection with any taxes that he may owe based on the Settlement Payment. Employee has been advised by his attorney to seek the advice of an accounting expert as to the taxability of any portion of the settlement payment.

3. **Acknowledgement of Separation Date and Payments.** Employee understands and agrees that his employment with Employer ceased on or about **October 1, 2012**, the date on which he was approved for a retirement disability pension from the Police and Fire Retirement System ["PFRS"]. Employee further acknowledges and agrees that he has received any and all payments due to him from Employer other than the payment referred to in paragraph 1. Employer agrees to issue and/or approve the issuance of the traditional retirement identification card/badge to Employee.

4. **Time to Sign and Return Agreement.** Employee understands and agrees that he has been given at least twenty-one (21) calendar days from the date he first received this Agreement to obtain the advice and counsel of the legal representative of his choice and to decide whether to sign it and further agrees that immaterial changes to the terms or form of this Agreement do not restart the running of this twenty-one (21) day period. Employee understands and agrees that in the event of a material change to the terms or form of this Agreement, the twenty-one (21) day period will start over. He understands that he may sign the Agreement at any time on or before the expiration of this 21-day period. He also understands that for seven (7) calendar days after he signs this Agreement he has the right to revoke it, and that this Agreement will not become effective and enforceable until after the expiration of this seven (7) day period. However, he specifically understands and agrees that any attempt by him to revoke this Agreement *after* the seven (7) day revocation period has expired is, or will be, ineffective. He also understands and agrees that to receive the consideration provided for under this Agreement, he must properly complete, sign and return this Agreement to Employer.

5. **Release of Claims by Employee.** In exchange for the consideration which Employee will receive pursuant to this Agreement and to the fullest extent permitted by law, Employee and his successors, assigns, heirs, personal representatives, executors, administrators, agents, attorneys, and representatives hereby knowingly and voluntarily release and discharge Employer and any predecessors, successors, assigns, heirs, representatives, executors, administrators, officers, managers, directors, shareholders, employees, agents, attorneys, parent corporations, holding companies, subsidiaries, affiliates and insurers (hereinafter collectively referred to as "Released Parties") from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies,

agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever in law, admiralty or equity, whether now known or unknown, vested or contingent, accrued or yet to accrue, against the Released Parties which Employee hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date upon which this Agreement has been executed by Employee, whether now known or unknown, including, but not limited to: (i) all claims relating to or arising out of any aspect of Employee's employment relationship with Employer or his separation thereof, including but not limited to any claims for wages, commissions, bonuses, severance pay, vacation pay or any other benefits, (ii) all claims of wrongful termination, harassment or discrimination in employment under federal or state law or regulation including, but not limited to, harassment, discrimination or retaliation claims based upon race, color, national origin, ancestry, religion, marital status, civil union status, age, sex, sexual orientation, citizenship status, pregnancy, medical condition or disability and/or claims under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, as amended ("ADEA"), the Older Workers' Benefits Protection Act ("OWBPA"), Sections 503 and 504 of the Rehabilitation Act of 1973, the Worker Adjustment and Retraining Notification Act ("WARN"), 42 U.S.C. Sections 1981 through 1988, the Equal Pay Act, the Occupational Safety and Health Act ("OSHA"), the Americans with Disabilities Act of 1990 ("ADA"), the New Jersey Law Against Discrimination ("NJLAD"), the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), the Employee Retirement Income Security Act ("ERISA"), the Immigration Reform and Control Act ("IRCA"), the Fair Labor Standards Act ("FLSA"), the Family and Medical Leave Act ("FMLA"), the New Jersey Family Leave Act ("NJFLA"), the New Jersey Conscientious Employee Protection Act ("CEPA"), the New Jersey Workers' Compensation, Disability and Unemployment statutes, the New Jersey Civil Rights Act, the Sarbanes Oxley Act of 2002, the Federal False Claims Act; and all amendments thereto to all the foregoing statutes, or any other employee relations statute, executive order, law or ordinance, (iii) any alleged violations of any duty or other employment-related obligation and all claims of breach of implied or express contract, breach of promise, misrepresentation, negligence, fraud, estoppel, defamation, infliction of emotional distress, violation of public policy, wrongful or constructive discharge, or any other employment-related tort, (iv) all claims under any other federal, state, or local law, and (v) any claim on Employee's behalf in any action brought by any administrative agency or other party (including claims for damages, in whatever form, and for reinstatement), excluding claims under the New Jersey Workers' Compensation Act.

6. **Release of Claims by Michael Giannone** Michael Giannone and the law firm of Gina Mendola Longarzo, Esq (hereinafter collectively referred to as "Employee's Attorney") hereby expressly acknowledge that they are waiving and forever foregoing any claim they have or might have against the Employer for any attorney's fees or costs under any statute, law, regulation, case law, or the like in connection with this action. Employee's Attorneys also represent that there are no fee-sharing agreements or relationships with any other attorneys in relation to the Employee's claims and Employee and Employee's Attorneys jointly represent that they know of no attorney, consultant, expert or the like who has or may have any claim against the Employer for any fee or costs related in any way to Employee's claims.

7. **Covenant Not to Sue by Employee and Employee's Attorneys.** Employee and Employee's Attorneys covenant and promise that they will not hereafter file or cause to be filed on

his behalf any charge, claims, legal or administrative action of any nature before any court or administrative agency to assert any claim against the Released Parties arising on or before the date of this Agreement except as may be necessary to enforce this Agreement. Further, Employee and Employee's attorneys specifically agree that, by this Agreement, they waive any right to recover any relief or recovery from such proceedings, including but not limited to costs and attorney's fees.

8. **Claims Not Waived.** Notwithstanding the preceding provision or any other provision of the Agreement, this Agreement is not intended to interfere with Employee's right to file a charge with an administrative agency in connection with any claim Employee may have against any of the Released Parties. However, by executing this Agreement, Employee hereby waives the right to recover, and agrees not to seek any damages, remedies or other relief for himself personally in any proceeding Employee may bring before such agency or in any proceeding brought by such agency on Employee's behalf, excluding any subsequent appeal proceedings that may be brought before the PFRS as a result of the revocation of Employee's disability retirement.

This Agreement is also not intended to apply to claims under ERISA Section 502(a)(1)(B) for accrued benefits (other than claims for severance and severance-related benefits) under any qualified Employee benefit plan of Employer or any of the Released Parties pursuant to the terms of any such plan. Further, Employee understands that Employee is not releasing any rights under this Agreement, that any claims which cannot be lawfully waived are excluded from this Agreement and that by executing this Agreement Employee is not waiving any such claims. This Agreement also does not release any rights or claims that may arise after the date on which Employee signs this Agreement. In addition, while this Agreement requires Employee to waive any and all claims against Employer arising under workers' compensation laws (e.g., claims of retaliation for filing a workers' compensation claim), it is not intended to prohibit Employee from filing in good faith for and from receiving any workers' compensation benefits from Employer' workers' compensation carrier for compensable injuries incurred during Employee's employment.

Finally, this Agreement is not intended to interfere with the right of either party to institute an action to enforce any provision of this Agreement.

9. **No Claims Exist.** Employee confirms that no claim, charge, complaint or action of any type by him against the Released Parties exists in any forum or form with respect to any matters covered by this Agreement. In the event that any such claim, charge, complaint or action exists or is filed, Employee agrees that he shall not be entitled to recover any relief or recovery therefrom, including but not limited to costs and attorney's fees, and that the Released Parties may be entitled to restitution, set-off or recoupment of all of the payments made pursuant to this Agreement.

10. **Effect of Violation or Breach of Settlement Agreement.** Except to the extent such agreement is prohibited by applicable law or regulation, in the event that Employee brings a lawsuit for any claims released by this Agreement or if either party is found to have violated any material term of this Agreement, the breaching party shall be required to pay all reasonable costs.

and attorneys' fees incurred by the non-breaching party in defending any such action, including, but not limited to, all reasonable costs and attorneys' fees in pursuing and recovering any award of damages or attorneys' fees and costs entered in favor of any non-breaching party in such an action.

11. **Indemnification.** Employee agrees to hold harmless and to indemnify the Released Parties from any claims that may be asserted by third parties, including but not limited to Employee's attorneys, against the Released Parties arising out of Employee's claims. Employee further agrees to satisfy any liens, claims, or encumbrances asserted by any third party based on such facts and circumstances and will hold the Released Parties harmless and indemnify them from any claims or rights asserted against them by any third party asserting such lien, claim, or encumbrance.

12. **Confidentiality.** Employee and Employer agree that confidentiality is a material term of the Agreement. Except as may be necessary to enforce this Agreement, Employee agrees not to disclose the existence, terms and/or substance of this Agreement or the claims asserted or alleged in the Claims and the entry into this Agreement to any person other than his spouse, immediate family members, attorneys, [REDACTED] professionals/experts, accountants and financial advisors, unless otherwise compelled to do so by a court, by subpoena or by an administrative agency of competent jurisdiction. Employee shall instruct his spouse, accountants and financial advisors that they shall not disclose the existence, terms and/or substance of this Agreement or the claims asserted or alleged in the Claims and they shall be obligated to keep this information confidential. Employer shall instruct those employees who were involved in the investigation and resolution of the Claims not to disclose the existence, terms and/or substance of this Agreement or the claims asserted or alleged in the Claims and the entry into this Agreement to any person other than as needed for business purposes or as required by law. Furthermore, pursuant to Police Department's Internal Affairs Policies and Procedures, Employee's Internal Affairs files shall be considered confidential information and will not be disclosed publicly other than as pursuant to the Internal Affairs Policies and Procedures. Neither Employer nor Employee shall issue any press releases in connection with this settlement.

In the event that Employee, or his representative, shall be served with any subpoena, order, process, or other request, the compliance of which would require the disclosure of the existence, terms and/or substance of this Agreement or the underlying facts which lead to the assertion of the Claims and the entry into this Agreement, that he will, within five (5) business days, and prior to disclosure, of receipt of such subpoena, order, process or request, notify Employer in writing of the service of such document(s) or request(s) upon him/hier.

In addition, Employee agrees not to use or disclose to any other person, including without limitation, future employers, any confidential or proprietary information or materials acquired in connection with Employee's employment with Employer without the express written consent of Employer.

13. **Non-disparagement by Employee; Response to Employment Referrals by Employer.** The parties agree and promise that they will not make, publish or cause to be made or published, any statement in writing or orally (which shall include all electronic

communications including, without limitation, texting, communications on social media sites such as Facebook and Twitter), which reasonably could be construed as injurious to or disparaging of the reputation or standing of the other party. Employer, if contacted by any current or prospective employer of Employee, will only provide Employee's dates of employment and his last job title. Nothing in this section shall prohibit Employee from testifying truthfully in any court proceeding or under any order issued by a court of law. Employee further agrees that Employee will notify Employer if Employee receives a subpoena to testify or give information of any type in an administrative or court proceeding brought against Employer.

14. **No Admission of Liability.** Employee specifically understands and agrees that by entering into this Agreement, Employer does not admit any liability whatsoever to him or to any other person arising out of the claims heretofore or hereafter asserted by him, and Employer expressly deny any and all such liability.

15. **Governing Law and Interpretation.** This Agreement shall be governed by and construed under the laws of the State of New Jersey without regard to principles of conflicts of laws.

16. **Choice of Forum.** Any action relating to the enforcement or interpretation of this Agreement shall be commenced in the courts in the State of New Jersey or the courts of the United States located in New Jersey.

17. **Severability.** Should any provision of this Agreement be declared illegal or unenforceable by a court of competent jurisdiction, 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 Agreement in full force and effect.

18. **Attorneys' Fees and Costs.** Employee and Employer agree that each party is responsible for their own attorneys' fees and costs incurred in connection with the preparation, negotiation and/or execution of this Agreement.

19. **Voluntary and Knowing Execution.** Employee affirms and acknowledges that he has read the foregoing Agreement, that he has been advised to discuss it with the counsel of his choice, and that he fully understands and appreciates the meaning of each of its terms, and that it is a voluntary, full and final compromise, release and settlement, to the fullest extent permitted by law, of all claims, demands, injuries, damages, actions or causes of action, known or unknown, suspected or unsuspected, with respect to Employee's employment relationship with Employer and/or any other claim, matter, or event occurring prior to his execution of this Agreement, including those he has or may have pursuant to the federal, state and local laws prohibiting discrimination in employment. He further affirms that other than as specifically provided herein, or as required by law, he is not entitled to any other payment(s), compensation or benefit relating to or as a result of his employment relationship with Employer.

20. **Amendment.** This Agreement may not be modified, altered or changed except upon express written consent of both parties wherein specific reference is made to this Agreement.

21. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties hereto, and fully supersedes any prior agreements or understandings between the parties. Employee acknowledges that he has not relied on any representations, promises, or agreements of any kind made to him in connection with his decision to accept this Agreement, except for those set forth in this Agreement.

22. **Waiver.** A waiver by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver or estoppel of any subsequent breach by the party. No waiver shall be valid unless in writing and signed by Employee and an authorized officer of Employer.

23. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

24. **Paragraph Headings.** The paragraph headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

25. **Counterparts.** The parties may execute this Agreement on separate counterparts, all of which taken together shall constitute the Agreement.

26. **Joint Drafting.** Each of the parties participated in drafting this Agreement after consulting with counsel. Therefore, the language of this Agreement shall not be presumptively construed in favor for or against either party.

27. **Authority of Signatories.** The individuals signing this Agreement and the parties on whose behalf such individuals are signing hereby represent and warrant that they are empowered and authorized to sign on behalf of and bind the parties for whom they have signed.

28. **Notices.** All notices, demands and other communications which may be or are required to be given hereunder or with respect hereto shall be in writing and shall be given personally or by facsimile with confirmation of receipt of transmission or by registered or certified mail, return receipt requested, postage pre-paid or by recognized national overnight courier, addressed to the party who is to receive same as follows, or to such address as any party shall notify the other parties by notice given in accordance with this provision.

If to Employer:

Thomas Ciccarone
Township Administrator
Township of Chatham
58 Meyersville Road
Township of Chatham, New Jersey 07928

With a copy to:

Kerrie R. Heslin, Esq.
Nukk-Freeman & Cerra, P.C.
636 Morris Turnpike
Suite 2F
Short Hills, NJ 07078

If to Employee:

Michael Giannone
20 Milton Ave.
Summit, New Jersey 07901

With a copy to:

Gina Mendola Longarzo, Esq
400 Main Street
Chatham Township, NJ 07928

**** Remainder of page intentionally left blank ****

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date indicated below their respective signatures.

BY SIGNING THIS AGREEMENT, THE UNDERSIGNED ACKNOWLEDGES THE FOLLOWING:

1. I HAVE BEEN ADVISED TO CONSULT WITH AN ATTORNEY PRIOR TO EXECUTING THIS AGREEMENT TO ENSURE THAT I FULLY AND THOROUGHLY UNDERSTAND ITS LEGAL SIGNIFICANCE;
2. I HAVE TAKEN THE TIME NECESSARY TO REVIEW COMPLETELY AND FULLY UNDERSTAND THIS AGREEMENT;
3. I HAVE BEEN GIVEN 21 DAYS TO CONSIDER THIS AGREEMENT AND EVEN IF I HAVE NOT USED THE FULL 21-DAY PERIOD, THE DECISION HAS BEEN MADE KNOWINGLY AND VOLUNTARILY;
4. I FULLY UNDERSTAND THIS AGREEMENT, ACCEPT IT, AND AGREE TO IT, AND AGREE THAT IT IS FULLY BINDING UPON ME FOR ALL PURPOSES; AND
5. I HAVE ELECTED TO EXECUTE THIS AGREEMENT, TO FULFILL THE PROMISES SET FORTH HEREIN, AND TO HAVE EMPLOYER PAY ME THE CONSIDERATION REFERRED TO IN THE AGREEMENT, I FREELY AND KNOWINGLY, AND AFTER DUE CONSIDERATION, ENTER INTO THIS AGREEMENT INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS I HAVE OR MAY HAVE AGAINST THE EMPLOYER UP TO THE PRESENT.

By: 

Michael Giannone

Date:

09/27/2013

Township of Chatham

By: 

Name:

Title:

Date: