

SETTLEMENT AND RELEASE AGREEMENT

This is a Settlement and Release Agreement (the "Agreement") between the Borough of Palmyra,¹ (the "Borough") with offices located at 20 West Broad Street, Palmyra, New Jersey, and Robert Brown ("Patrolman Brown"), an individual who resides at 23 Pear Street, Palmyra, New Jersey 08065.

WHEREAS, Patrolman Brown is employed as a police officer by the Borough and currently holds the rank of Patrolman; and

WHEREAS, Patrolman Brown filed a suit in lieu of prerogative writ in the New Jersey Superior Court, Burlington County, Law Division, entitled Robert Brown, Plaintiff v. Borough of Palmyra, Defendant, bearing the Docket Number BUR-L-1286-14, appealing disciplinary action taken against him by the Borough; and

WHEREAS, due to his medical condition, Patrolman Brown is presently and permanently unable to perform the job responsibilities of Patrolman; and

WHEREAS, the Borough intends to take all action necessary to effect Patrolman Brown's involuntary retirement; and

WHEREAS, the Borough and Patrolman Brown desire to settle fully and finally any and all differences between the Patrolman Brown and the Borough; and

WHEREAS the Borough and Patrolman Brown desire to set forth all of the terms and conditions of their agreement in this Settlement and Release Agreement; and

THEREFORE, in consideration of the promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which each of the parties acknowledge, the Borough and Patrolman Brown agree as follows:

1. All claims Patrolman Brown has or had against the Borough are settled and resolved. These claims brought by Patrolman Brown include the suit in lieu of prerogative writ entitled, "Robert Brown, Plaintiff vs. Borough of Palmyra, Defendant," filed with the New Jersey Superior Court, Burlington County, Law Division, bearing the Docket Number BUR-L-1286-14, appealing disciplinary action taken against him by the Borough. If Patrolman Brown has not already done so, Patrolman Brown will take all action necessary to dismiss with prejudice the lawsuit bearing Docket Number BUR-L-1286-14 against the Borough. This action includes providing the Borough with an executed Stipulation of Dismissal for the court action upon Patrolman Brown's execution of this Settlement and Release Agreement.

¹ The Borough of Palmyra includes its Departments and Divisions, including the Palmyra Police Department.

2.

[REDACTED]

Patrolman Brown remains responsible for the payment of his attorney's fees.

3. Based on medical documentation, the parties agree that due to his medical condition, Patrolman Brown is totally and permanently disabled from performing his job responsibilities as Patrolman. As a result, the parties agree to take all action reasonably necessary to effectuate Patrolman Brown's involuntary retirement effective August 1, 2015. The Borough will take such action after the expiration of the seven (7) day revocation period referred to in paragraph 12. The parties recognize, however, that only the Board of Trustees, Police and Firemen's Retirement System, Department of Treasury, State of New Jersey (the "Division of Pensions") has the authority to approve Patrolman Brown's retirement as an involuntary retirement and the effective date of that retirement. In the event that the Division of Pensions does not approve Patrolman Brown's retirement effective on August 1, 2015, Patrolman Brown agrees to take administrative leave without pay effective August 1, 2015 through the date of his retirement. In the event that the Division of Pensions does not approve Patrolman Brown's retirement as an involuntary retirement, Patrolman Brown agrees to take an ordinary disability retirement or other retirement for which he qualifies effective on August 1, 2015 or effective on a date as determined by the Division of Pensions. Patrolman Brown acknowledges that the Borough is not otherwise obligated to take all action reasonably necessary to effectuate Patrolman Brown's involuntary retirement and that this undertaking provides part of the consideration to Patrolman Brown for entering into this Agreement.

4. Patrolman Brown will remain on sick leave through and including July 31, 2015. Patrolman Brown will retire from his employment at the end of business on July 31, 2015 or at the end of business on the day before the retirement date as determined by the Division of Pensions (the "Retirement Date"). Not later than thirty (30) days following the Retirement Date, the Borough will compensate Patrolman Brown for three-hundred seventy-one and one-quarter (371.25) hours of accrued but unused sick leave at 60% of Patrolman Brown's final salary value, an amount equal to eight-thousand eight-hundred nine dollars and seventy-six cents (\$8,809.76)—minus appropriate withholdings and deductions—in accordance with the applicable collective bargaining agreement. The Borough will provide Patrolman Brown with health benefits, subject to employee contributions, through the day prior to the Retirement Date. Commencing on the Retirement Date, the Borough will provide Patrolman Brown with retiree health benefits, subject to retiree contributions. Retiree health benefits for Patrolman Brown and

his spouse will be provided in accordance with the applicable collective bargaining agreement. Patrolman Brown agrees that he is not owed any wages from the Borough for work performed, whether salary, overtime or for accrued but unused time off. Patrolman Brown understands that except as provided in this Agreement, he is entitled to nothing further from the Borough. The Borough shall not be liable for costs or the payment of Patrolman Brown's attorney's fees. Patrolman Brown agrees that neither he nor his legal counsel is entitled to, nor shall they seek, any further compensation from any of the Releasees (as defined in Paragraph 5) for any other amounts, damages, costs, disbursements or attorneys' fees in connection with any of the matters encompassed in this Agreement, or for any aspect of Patrolman Brown's employment with the Borough, including, but not limited to, the retirement from that employment.

5. As an inducement for the Borough to enter into this Agreement, Patrolman Brown releases and forever discharges the Borough, its current, former and future governing body, officers, employees, attorneys, agents, successors and assigns, and all persons acting by, through, under, or in concert with any of them (the Borough and the foregoing other persons and entities are hereafter defined separately and collectively as the "Releasees") from any and all debts, obligations, suits, actions, causes of action, claims or demands, in law or in equity, whether known or unknown, suspected or unsuspected, and whether concealed or hidden, which Patrolman Brown now holds or has at any time before held against the Releasees, or any of them. The claims covered by this release and discharge include, but are not limited to, claims, liabilities, costs, and attorney fees under the Age Discrimination in Employment Act ("ADEA"), as amended, the Older Workers Benefit Protection Act ("OWBPA"), Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Equal Pay Act, the Family and Medical Leave Act, the Americans With Disabilities Act, the Vietnam Era Veterans Readjustment Assistance Act, the Fair Credit Reporting Act, the Fair Labor Standards Act, the Sarbanes-Oxley Act of 2002, the New Jersey Law Against Discrimination, the New Jersey Family Leave Act, the New Jersey Conscientious Employee Protection Act, the New Jersey Civil Rights Act, the United States Constitution, the New Jersey Constitution, employment discrimination claims, including discrimination claims based on sex, sexual orientation, race, color, national origin, religion, age, marital status or physical or mental disability or medical condition, whistleblower claims, claims for wrongful termination, intentional or negligent infliction of emotional distress, fraud, breach of the implied covenant of good faith and fair dealing, tortious interference with prospective economic advantage, sexual harassment claims and harassment claims based on any protected class, such as, for example, race, religion, physical or mental disability, medical condition, age or ethnic origin, claims growing out of any legal restrictions on the Employer's right to terminate employees, such as claims that may arise under various contract, tort, public policy or wrongful discharge theories, or any other state or federal statute or the common law. Patrolman Brown releases all claims including those of which Patrolman Brown is not aware and those not mentioned in this Agreement. Patrolman Brown specifically releases any and all claims arising out of his employment with the Borough or retirement therefrom. This release does not apply to claims arising out of a breach of this Agreement.

6. Except as it relates to claims arising under the ADEA or the OWBPA, Patrolman Brown covenants and agrees that he will not now or at any time in the future commence, maintain, prosecute or participate in as a party, or permit to be filed by any other person on

Patrolman Brown's behalf or as a member of any alleged class of persons, any action, suit, proceeding, claim or complaint of any kind (except for ADEA or OWBPA claims) against any of the Borough and/or Releasees with respect to any matter which arises from or relates to Patrolman Brown's employment with the Borough or the retirement therefrom or which is encompassed in the release set forth in paragraph 5 above. For any breach of this covenant not to sue, the Borough and/or Releasees shall be entitled to recover any and all attorneys' fees and costs incurred as a result of such breach in addition to liquidated damages as provided in paragraph 11. Nothing herein shall prevent Patrolman Brown from participating in a charge with the Equal Employment Opportunity Commission or other similar regulatory agencies, as required by law, but Patrolman Brown agrees that he will not seek nor shall he be entitled to recover, any monetary damages from any such proceeding.

7. Patrolman Brown represents that he has not assigned to any third party any claim that he has, may have or believes that he has against the Borough. Patrolman Brown represents that he has no other charge, claim or complaint of any kind pending against the Borough and he further covenants and represents that he will not file or permit any third-party to file any charge, claim or complaint against the Borough seeking personal recovery or personal injunctive relief with respect to any matter in any way arising out of or relating to his employment with the Borough.

8. Patrolman Brown acknowledges that in the execution of this Agreement he is effecting a knowing and voluntary waiver of any claims, liabilities or causes of action against the Borough and any of its members of the governing body, employees, agents, successors and assigns of the Borough, which Patrolman Brown now has or hereafter can, shall or may have.

9. Patrolman Brown represents that he has returned all Borough issued property and equipment to the Borough, including but not limited to all forms of identification and the like, which have been provided to Patrolman Brown. Patrolman Brown further represents that he does not have any confidential documents, including, but not limited to, notes, materials, records, books, papers, correspondence, reports and information of any kind, which he obtained during the course of his employment, which belong to the Borough, or any copies thereof, in whatever form held, whether upon computer, hard disk, audio or videotape, written, typewritten, or otherwise.

10. Patrolman Brown agrees that no disparaging, negative or derogatory remarks, written, oral or otherwise, regarding the Borough, or any part or phase of the employment relationship, shall be disclosed to any third party, except as may be required by law or court order. Patrolman Brown shall refer all prospective employment inquiries to the attention of the Chief of Police, presently Chief Scott Pearlman. In response to any prospective employment inquiries, the Borough agrees to solely provide Patrolman Brown's dates of employment, salary and position/title history during the employment. The Borough will release other information as required by law.

11. If Patrolman Brown breaches this Agreement by filing a claim against the Borough (except a claim under the Age Discrimination in Employment Act, as amended), or any

of the Releasees, or by otherwise violating any material term of this Agreement, Patrolman Brown will pay the Borough the sum of \$5,000.00 (five-thousand dollars and no cents). Patrolman Brown also agrees to pay all legal fees and costs that the Borough and/or the Releasees incur to obtain the \$5,000.00 (five-thousand dollars and no cents) liquidated damages for a breach of this Agreement and/or the dismissal of any such claim filed against the Borough and/or the Releasees. This paragraph does not alter or diminish the effectiveness of the waiver and release set forth above.

12. Patrolman Brown understands that he has up to twenty-one (21) days to execute this Agreement and seven (7) days thereafter to revoke his acceptance. Patrolman Brown may accept and return the Agreement prior to the twenty-first day, but if he does, he waives the right to the full twenty-one (21) days. Patrolman Brown understands that, after he signs this Agreement, he will have seven (7) days in which he may revoke his acceptance. Should Patrolman Brown elect to revoke his acceptance, he or his attorney should direct his written revocation to Ellen M. Horn, Esq., Ruderman & Glickman, P.C., via fax at (973) 467-8891. To be effective, Ruderman & Glickman must receive the written revocation within the seven day period. The Borough and Patrolman Brown agree and Patrolman Brown understands that he does not waive any rights or claims that may arise after the date he executes this Agreement. Patrolman Brown and the Borough agree that any modifications to this Agreement, whether material or immaterial, do not restart the running of the twenty-one (21) day period.

13. Should any provision of this Agreement be declared or determined by a court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected and the illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement. The remainder of the Agreement shall remain in full force and effect. If, however, the Release contained in this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, Patrolman Brown agrees, promptly upon the request of the Borough, to execute a new release that is valid and enforceable. In the absence of a valid, enforceable release, this Agreement shall be null and void.

14. This Agreement shall not be construed in favor of or against any party on the basis that the party did or did not authorize this Agreement. It is intended that this Agreement shall be comprehensive in nature and shall be construed liberally to affect its purposes.

15. This Agreement shall not in any way be construed as an admission on the part of the Borough or the Releasees that the Borough or the Releasees wrongfully or in any manner or fashion whatsoever violated any law or obligation to Patrolman Brown. In fact, the Borough specifically denies that it violated any law or obligation in relation to Patrolman Brown and further denies that it violated Patrolman Brown's rights in any way.

16. This Agreement is binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, successors and assigns.

17. This Agreement shall be deemed to have been made in New Jersey, and shall be interpreted, construed, and enforced pursuant to the laws of the State of New Jersey.

18. This Agreement sets forth the entire agreement between the parties, fully supersedes any and all prior agreements or understandings between the parties, and may not be modified orally.

19. The parties may execute this Agreement in counterparts. Each counterpart, when executed will be deemed to be an original, all of which together will constitute one Agreement. The parties agree that faxed or PDF scanned counterpart signatures render this Agreement binding.

20. This Agreement is subject to formal approval and ratification by the Borough's governing body.

21. PATROLMAN BROWN EXPRESSLY ACKNOWLEDGES, REPRESENTS, AND WARRANTS THAT HE HAS CAREFULLY READ THIS AGREEMENT; THAT HE FULLY UNDERSTANDS THE TERMS, CONDITIONS, AND SIGNIFICANCE OF THIS AGREEMENT; THAT HE HAS HAD AMPLE TIME TO CONSIDER AND NEGOTIATE THIS AGREEMENT; THAT HE HAS HAD A FULL OPPORTUNITY TO REVIEW THIS AGREEMENT; AND THAT HE HAS EXECUTED THIS AGREEMENT VOLUNTARILY AND KNOWINGLY, WITH THE ADVICE OF COUNSEL.

<u>Robert K. Brown</u> ROBERT BROWN	<u>05-14-15</u> DATE
<u>[Signature]</u> WITNESS	<u>5-14-15</u> DATE 20

By: [Signature] 05/20/2015
JOHN GURAL
Borough Administrator DATE

[Signature] 05/21/2015
MAYOR