

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and Release (hereinafter referred to as the "Agreement") is entered into this 5<sup>TH</sup> day of NOVEMBER, 2013, by and between the Borough of Hillsdale, a municipal corporation of the State of New Jersey (hereinafter referred to as the "Borough" or the Employer) and Sean Kavanagh (hereinafter referred to as the "Employee").

WHEREAS, Kavanagh is currently employed by the Borough as a sworn law enforcement officer in its Police Department; and,

WHEREAS, the Borough has reviewed and is in the process of completing its investigation as to Kavanagh which could have led to charges against Kavanagh for possible violations of Departmental Rules and Regulations and State statute; and,

WHEREAS, prior to the completed investigation of all of the facts underlying the Borough's contemplated charges, Kavanagh filed with the Police and Firemen's Retirement System ("PFRS"), for a disability retirement pension; and,

WHEREAS, Kavanagh's physician has further certified that said disability conditions leave him unable to perform the functions of his job; and,

WHEREAS, Kavanagh's physician has additionally certified that his conditions leave him totally and permanently disabled; and,

WHEREAS, Kavanagh's physician has also certified that there is no possibility that his condition will improve to the point where he will be able to resume his duties as police officer; and,

WHEREAS, Kavanagh is physically unable to return to work as a police officer employed by the Borough and has no desire or want to do so;

NOW, THEREFORE, in consideration for the promises and conditions set forth herein, the Borough and Kavanagh agree as follows:

1. TERMS

- a. Kavanagh has previously been placed on an unpaid leave of absence commencing in May, 2013 and continuing to the date of this agreement. During this unpaid leave of absence, the Township has not made any pension contributions on Kavanagh's behalf nor has Kavanagh accrued any "leave time" (including but not limited to sick and personal leave) or received any other contractual benefit under the collective bargaining agreement between PBA Local #207 and the Borough.; and,

- b. The Borough agrees that it will cease any further investigation and forego the opportunity to bring any additional charges against Kavanagh for any act occurring prior to the date of this Agreement, subject to the provisions below; and,
- c. In consideration of the Borough's covenants as set forth in this Agreement, Kavanagh stipulates and agrees that he is physically unable to continue employment with the Borough. Concurrent with the execution of this Agreement, Kavanagh shall submit to the Borough a valid and binding irrevocable letter of resignation from his employment with the Borough. This resignation letter will unequivocally state that Kavanagh is irrevocably resigning from his employment with the Borough, effective October 1, 2013. A copy of this resignation letter is attached hereto as Exhibit A. This letter of resignation shall be valid, binding and irrevocable at the time it is submitted to the Borough and is being held in escrow only because <sup>of</sup> Kavanagh's disability pension application. Kavanagh has already filed for voluntary disability retirement pension with the New Jersey Police and Firemen's Retirement System ("PFRS"). It is expressly understood that Kavanagh's resignation from his position with the Borough is final and irrevocable and is no way, shape or form dependent on the disposition of Kavanagh's voluntary disability pension application.
- d. For the period between October 1, 2013 and until the date the Division of Pensions makes a determination on the disability pension application,

Kavanagh will continue on an unpaid leave of absence from his position with the Borough. During this unpaid leave, the Township will not make any pension contributions on Kavanagh's behalf nor will Kavanagh accrue any "leave time" (including but not limited to sick and personal leave) or receive any other contractual benefit under the collective bargaining agreement between PBA Local #207 and the Borough.

- e. Kavanagh agrees that he shall have no right to apply in the future for a position of employment with the Borough, even should his disability pension be determined to be ended by PFRS, and that should he do so in contravention of this provision, the Borough shall be legally permitted to ignore said application without any ability on Kavanagh's behalf to challenge or otherwise institute an action over the Borough's failure to process or consider said application.

## 2. RELEASE (PARTIAL)

- A. Kavanagh, his heirs, assigns and agents in consideration of the terms described in Paragraph 1 of this Agreement, hereby release, waive and discharge the Borough, its departments, officers, trustees, agents, employees, successors and assigns from each and every claim, demand, cause of action, obligation, damage, complaint, expense, compensation or action or writ of any kind, nature, character or description that Kavanagh had, now has, or may have arising out of this disciplinary action, except any claim for workers compensation, which is specifically not waived and/or discharged. In

addition, Kavanagh specifically retains the right to grieve or otherwise bring claims relating to unpaid wages or other monies owed but not paid to him by the Borough.

### 3. CONFIDENTIALITY

- A. Except in proceedings to enforce this Agreement, proceedings before the New Jersey Police and Firemen's Retirement System or as otherwise required by applicable law, this Agreement shall be deemed confidential and shall not be disclosed to anyone by Kavanagh or the Borough unless required to be made public by law. This paragraph shall not prohibit Kavanagh from discussing the Agreement with his immediate family, attorneys, and tax/financial advisors. The Borough is not precluded from discussing this Agreement within its organizations, on a need to know basis, but it shall advise each recipient of this information by it of the requirements of this paragraph mandating confidentiality and obtain their compliance. In response to any inquiries concerning the status of the claims against one another, the parties shall only state that the matter has been resolved between the parties.
- B. In the event any prospective employer of Kavanagh contacts the Borough, the Borough is restricted to providing information regarding the duration of Kavanagh's service, his salary and that he has resigned or retired, as the case may be. Said information shall be provided to a prospective employer by the Chief of Police.

### 4. ADDITIONAL RELEASES

A. Kavanagh hereby releases, acquits, gives up and forever discharges the Borough and any and all of its officials (elected and/or appointed), officers, employees, representatives, assigns and designees, (past, present and/or future) from any and all claims and rights which he may have arising from his employment with the Borough of Hillsdale Police Department up to the time of the execution of this Separation Agreement and General Release by both parties. This releases any and all claims including those which Kavanagh, his family, heirs, designees, representatives and assigns are not aware and those not mentioned in this Separation Agreement and General Release. This Separation Agreement and General Release applies to any and all claims and/or potential claims resulting from anything which has happened from Kavanagh's first date of employment with the Borough through the last date of execution of this General Release and Separation Agreement by both parties. Kavanagh specifically releases any and all claims and/or potential claims, including, but not limited to those arising under the National Labor Relations Act, Title VII of the Civil Rights Act of 1964; Sections 1981 through 1988 of Title 42 of the United States Code (Civil Rights Act of 1871); Civil Rights Act of 1991; the American with Disabilities Act; the Rehabilitation Act of 1973; the Age Discrimination in Employment Act; the Fair Labor Standards Act; the Occupational Safety and

Health Act (OSHA) and the Public Employment Occupational Safety and Health Act (PEOSHA); the Equal Pay Act; the Employee Retirement Income Security Act; the New Jersey Law Against Discrimination; the New Jersey Civil Rights Act; ~~the New Jersey~~; The New Jersey Conscientious Employee Protection Act; the Family Medical Leave Act) Federal) and the Family Leave Act (State); the Federal and New Jersey State Wage and Hour Acts; the Federal and New Jersey State Equal Pay Law; any other Federal, State and/or local civil rights law or any other local, State or Federal laws, regulations, statutes or ordinances involving labor/employment or other applicable matters; any public policy; contract (express, written, implied or oral), tort and/or common law; any claims for terminal, vacation, sick or personal leave pay or payment pursuant to any practice policy, handbook or manual of the Borough; any allegation for costs, fees other expenses including, but not limited to attorneys' fees; and/or, any and all damages which are now known or may be in the future become known which arise from or relate to any and/or all portions of Kavanagh's employment with the Borough.

B. The Borough releases, acquits, gives up and forever discharges any and all claims and/or potential claims and rights which it ever had, now has, or may have against Kavanagh, his family, heirs, assigns, designees and representatives, up to the time of the final execution by

both parties of this Separation Agreement and General Release. This releases all claims known or which should have been known as of the date of this Separation Agreement and General Release. This Separation Agreement and General Release applies to claims and/or potential claims resulting from anything which has happened from Kavanagh's first date of his employment with the Borough up to the date of the final execution of this Separation Agreement and General Release. Nothing in this Release shall waive the parties' rights to enforce the terms of this Agreement.

- C. This Separation Agreement and General Release contains the full agreement between Kavanagh and the Borough and may not be modified, altered, changed or terminated, except upon the express prior written consent of Kavanagh and the Borough which consent must be signed by both Kavanagh and the Borough or their duly authorized agents.
- D. The waiver by Kavanagh and/or the Borough of a breach of any provision hereof shall not operate or be construed as a waiver of that breach by the other or as a waiver of any subsequent breach by the other.

#### 5. OTHER LANGUAGE

- A. If any term, provision or condition of this Separation Agreement and General Release is held invalid or unenforceable by a court of



competent jurisdiction, such holding shall be without effect upon the validity or enforceability of any other provision, term or condition of this Separation Agreement and General Release, provided that the essential consideration received by each party is not eliminated or reduced as a result of such a declaration of invalidity.

- B. Kavanagh represents and warrants that no other person or entity has or has had any interest in the claims, potential claims, demands, obligations or causes of action referred to in this Separation Agreement and General Release and that Kavanagh has not sold, assigned, transferred, conveyed and/or otherwise disposed of any of the claims, potential claims, demands, obligations or causes of action referred to in this Separation Agreement and General Release.
- C. This Separation Agreement and General Release shall be construed and interpreted in accordance with the laws of the State of New Jersey.
- D. This Separation Agreement and General Release shall become effective immediately following execution by Kavanagh.
- E. This Separation Agreement and General Release contains the entire agreement between Kavanagh and the Borough with regard to the matters set forth herein and shall be binding upon and insure to the benefit of their officials (elected and/or appointed), officers, directors, attorneys, representatives, employees, associates, partners, agents,

servants, executors, administrators, personal representatives, heirs, successors and assigns of each and all other persons, firms, corporations, associations or partnerships or any other entity or persons connected therewith (past, present and future) except as set forth herein or as may be agreed to in a further writing between the parties and a further execution by the parties.

- F. In entering into this Separation Agreement and General Release, Kavanagh has relied upon the legal advice of his attorney, who is the attorney of his own choice, as to the terms of this Separation Agreement and General Release, which have been completely read and explained by this attorney and those terms are fully understood and voluntarily accepted.
- G. All notices, demands and requests which are required and desired to be given shall be in writing and shall be sent pre-paid, registered or certified mail, return receipt requested, addressed as follows:

For Borough:

Eric Martin Bernstein, Esq.  
Eric M. Bernstein & Associates, L.L.C.  
34 Mountain Boulevard, Building A  
P.O. Box 4922  
Warren, New Jersey 07059-4922

For Kavanagh:

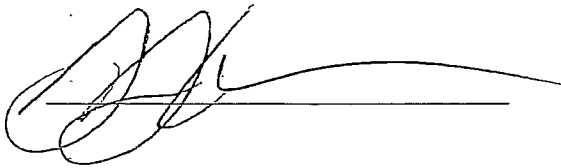
D. John McAusland, Esq.  
611 Palisade Avenue  
Englewood Cliffs, New Jersey 07632

H. All of the terms and conditions herein are specific to this Separation Agreement and General Release and shall not serve as a precedent for any other future Agreements with any other employee of the Borough nor used as an indication of future actions of the Borough.

IN WITNESS WHEREOF, Kavanagh and the Borough have hereunto set their hands on the day set forth below.

ATTEST:

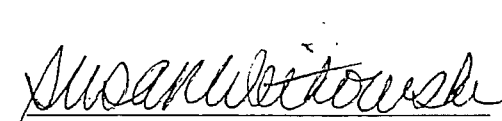
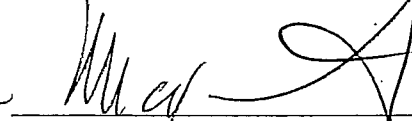
SEAN KAVANAGH

  
Sean Kavanagh

Dated: 11-5-13

ATTEST:

FOR THE BOROUGH OF HILLSDALE

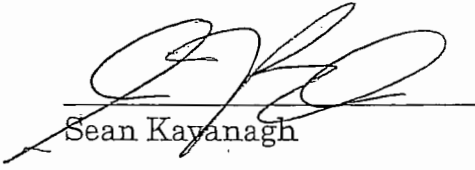
  
Susan Witkowski,  
Borough Clerk  
Max Arnowitz, Mayor

Dated: 12/3/2013

EXHIBIT "A"

October 1, 2013

Effective on October 1, 2013, I, Sean Kavanagh, hereby resign my position as a Police Officer in the Hillsdale Borough Police Department. This resignation is binding upon me and anyone acting on my behalf and irrevocable in nature and deed. By my signature below, I am also certifying that my irrevocable resignation is being done by me with the full knowledge of what an irrevocable resignation entails; that I do not have any mental or other defects which prevent me from making a rational decision, such as an irrevocable resignation; and, that I completely and fully take this action of my own volition.

  
Sean Kavanagh