SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (hereinafter referred to as the "Agreement") is entered into, on October 30, 2015, by and between Plaintiff, Christopher Lemay (hereinafter referred to as the "Employee") and the Defendants, BOROUGH OF HALEDON (hereinafter referred to as the "Borough"), and the Louis Mercuro (hereinafter referred to as the "Mercuro") (hereinafter collectively referred to as the "Employer").

WHEREAS, the Employee is an employee of the Borough; and

WHEREAS, the Employee has asserted claims against the Employer arising out of his employment with the Employer in a lawsuit filed with the Superior Court of New Jersey, Law Division, Passaic County, bearing Docket No. PAS-L-1785-12 (hereinafter referred to as the "Lawsuit"); and

WHEREAS, the Employer denies engaging in any wrongdoing or any unlawful conduct and denies all liability on the claims asserted by the Employee, including those asserted in the Lawsuit and makes no admissions regarding the same; and

WHEREAS, the Employee and Employer desire to settle fully and finally all differences between them through the date of this Agreement, including but not limited to those differences embodied in the aforementioned Lawsuit.

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, it is hereby agreed as follows:

1. The foregoing recitals are incorporated herein as if set forth at length.

2. **Consideration.** Plaintiff understands that, in consideration for the promises and agreements set forth herein, the Parties agree that, subject to the expiration of the Revocation Period set forth in Paragraph 19 below, and provided that the Employee has not revoked this Agreement as provided therein, the Borough will pay to Plaintiff as full and complete settlement and final satisfaction of the claims raised in the Lawsuit and any and all other claims that Plaintiff has or may have against the Employer and/or the Releasees as defined below, through the date of execution of this Agreement, including, but not limited to, any claim for attorney's fees and costs, the gross sum of $350,000.00 (hereinafter referred to as the "Settlement Payment") on account of all claims for personal injury, emotional distress and the physical manifestation thereof.

Following the expiration of the Revocation Period set forth in Paragraph 19 below, and provided that the Employee has not revoked this Agreement as provided therein, the Settlement Payment shall be made within 30 days following the full execution of this Agreement and delivery of the executed Stipulation of Dismissal, whichever is later, and shall be without federal and state withholdings, taxes or other payroll deductions. The check(s) shall be made payable to "DiFrancesco, Bateman, , Kunzman, Davis, Lehrer & Flaum, P.C. Trust Account." In this regard, Defendant will issue an IRS Form 1099 only to DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum P.C. regarding this payment with Box 3 ("other income") checked. Plaintiff's counsel shall supply Defendant with an IRS Form W-9.

The Employee and his attorneys agree that no amounts or damages, including, but not limited to, interest or other fees, other than the Settlement Payment, shall be sought by or owed to the Employee or to his attorneys by the Employer or any insurer in connection with this matter.

The Employee agrees that he will be responsible for the payment of any and all applicable state, federal and local taxes that may be owed by him with respect to the Settlement Payment and will assume all liability with respect to such taxes, if any.

The Employee agrees to indemnify, hold harmless, and defend the Employer and their insurers and reinsurers against any loss, cost, expense or liability imposed upon or incurred by the Employer and/or their insurers and reinsurers arising from, relating to or concerning payment of any taxes deemed to be owed by Employee with respect to the Settlement Payment.

3. **Waiver and Release of Claims.** In settlement of this matter and in consideration of the Settlement Payment set forth in Paragraph 2 above, the Employee hereby releases and forever discharges the Employer and its past, present and future officers, officials, council members, administrators, directors, attorneys, employees, insurers, reinsurers, agents, and their respective successors and assigns (hereinafter collectively referred to as the "Releasees"), jointly and severally, from any and all actions, complaints, causes of action, lawsuits or claims of any kind (hereinafter collectively referred to as the "Claims"), known or unknown, asserted or unasserted, which the Employee, his wife, heirs, agents, executors, successors or assigns ever had, now have or hereafter may have against Releasees arising out of any matter, occurrence, omission, or event existing or occurring prior to the Employee's execution of this Agreement, including, without limitation, Claims:

a. relating to or arising out of Employee's employment with the Employer including any and all claims for back pay, front pay, benefits or other financial losses;

b. relating to or arising out of any pension law or regulation, including, but not limited to the New Jersey Police and Firemen's Retirement Act, N.J.S.A. 43:16-1 et seq. and the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq.;

c. of discrimination, harassment, and or retaliation based on age, sex, gender, race, religion, color, creed, disability, handicap, citizenship, national origin, ancestry, sexual orientation, pregnancy, veteran's status, marital status, familial status, domestic partnership status, civil union status, or any other factor protected by federal, state or local law (such as Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, *42* U.S.C. § *1981a*, the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., the Older Workers Benefit Protection Act, 29 U.S.C. § 621 et seq., and/or the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.);

d. relating to or arising out of, the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq.;

e. relating to or arising out of COBRA, or any implementing rules and regulations;

f. relating to or arising out of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq.;

g. relating to or arising out of the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., or any implementing rules and regulations;

h. relating to or arising out of the New Jersey Public Employees' Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., or any implementing rules and regulations;

i. relating to or arising out of the Fair Credit Reporting Act, 15 U.S.C. § 1581 et seq.;

j. relating to or arising out of 42 U.S.C. § 1981, 1983 or 1985;

k. relating to or arising out of the Health Insurance Portability and Accountability Act, P.L.104-191;

l. relating to or arising out of the New Jersey Worker Freedom From Employer Intimidation Act, N.J.S.A. 34:19-9;

m. relating to or arising out of the Civil Service Act, N.J.S.A. 11A:1-1 et seq.;

n. based upon any contract or implied contract;

o. relating to or arising out of any provision of any other law, constitution, regulation, ordinance, decision, common or statutory, of the United States, New Jersey or any other state, city, county or municipality;

p. for attorneys' fees, costs or expenses; and/or

q. based upon any other statutory or common law, now existing or hereinafter recognized, including, but not limited to violations of public policy, tort, privacy, defamation, intentional infliction of emotional distress, negligence, contract, whistleblower laws, promissory estoppel or equitable estoppel; and

4. **No Other Proceedings**. By his signature below, the Employee represents that there are no pending or contemplated lawsuits, charges, administrative proceedings, criminal complaints or other claims of any nature whatsoever by the Employee against the Employer or any Releasees in any state or federal court or before any agency or other administrative body. Further, the Employee agrees, to the extent permitted by law, not to assert any claims, charges, grievances or other legal or contractual proceedings against the Employer or any Releasees in any forum, based upon his employment with the Employer, whether known or unknown. The Employee further represents and agrees that he has not filed any claims against the Employer or any Releasees with any local, state or federal enforcement agency, including, but not limited to, any law enforcement agency, the U.S. Department of Labor, the Equal Employment Opportunity

Commission ("EEOC"), the New Jersey Department of Labor & Workforce Development, or the New Jersey Division on Civil Rights.

5. **Challenging of Waiver.** The Employee understands that nothing in this Agreement is intended to interfere with or deter his right to challenge the waiver of an ADEA claim or state law age discrimination claim or the filing of an ADEA charge or ADEA complaint or state law age discrimination complaint or charge with the EEOC or any state discrimination agency or commission or to participate in any investigation or proceeding conducted by those agencies. Further, the Employee understands that nothing in this Agreement would require him to tender back the money received under this Agreement if he seeks to challenge the validity of the ADEA or state law age discrimination waiver, nor does the Employee agree to ratify any ADEA or state law age discrimination waiver that fails to comply with the Older Workers' Benefit Protection Act by retaining the money received under the Agreement. Further, nothing in this Agreement is intended to require the payment of damages, attorneys' fees or costs to the Employer should the Employee challenge the waiver of an ADEA or state law age discrimination claim or file an ADEA or state law age discrimination suit except as authorized by federal or state law. Notwithstanding the foregoing two sentences, as provided herein the Employee also waives any right to recover from the Employer and any Releasees in a civil suit brought by any governmental agency or any other individual on his behalf with respect to any Claim.

6. **Medicare Eligibility.** The Employee represents and warrants that he is not Medicare eligible and that Medicare has not made any conditional payments for medical services or products received by the Employee (pursuant to U.S.C. § 1395y(b) and the corresponding regulations) and related to the accident(s), injury(ies), or illness(es) giving rise to this Agreement. Further, the Employee represents and warrants that if any conditional payments related to the accident(s), injury/injuries), or illness(es) giving rise to this settlement are or have been made by Medicare, then within sixty (60) days of the execution of this Agreement, the Employee shall reimburse Medicare for such conditional payments as required by Medicare Secondary Payer law, including Medicare regulations at C.F.R. § 411.24(g) and (h). The Parties agree that all representations and warranties made herein shall survive settlement.

The Parties further agree that, in the event of a breach of the representations and warranties made by the Employee, the Employer and their insurers and/or reinsurers shall be entitled to set off any remaining payments due the Employee under the terms of this Agreement or any other agreement, as well as to the full extent of damages and other relief available at law and equity.

The Employee agrees to indemnify, hold harmless, and defend the Employer and their insurers and reinsurers against any loss, cost, expense, or liability imposed upon or incurred by the Employer and/or their insurers and reinsurers arising from, relating to or concerning Medicare conditional payments related to the accident, injury, or illness giving rise to this settlement.

Each Party has been advised by counsel before signing this Agreement and has relied upon advice of such counsel with respect to all aspects of this Agreement, including but not limited to the Parties' respective obligations (if any) to reimburse Medicare for conditional payments related to the accident(s), injury(ies), or illness(es) giving rise to this settlement. It is understood and agreed that no mistake of law or mistake of fact made by any Party, including but not limited to any mistake with respect to any obligation to reimburse Medicare for conditional payments, shall constitute a basis for rescission or reformation or render any portion of this Agreement void or voidable.

7. **Stipulation of Dismissal.** As a condition precedent to delivery of the Settlement Payment set forth in Paragraph 2 above, the Employee agrees that his counsel will deliver to the Employer's counsel a Stipulation of Dismissal, with prejudice and without costs, relating to the Lawsuit, which shall be executed by the Employee's counsel, and hereby consents to the filing of that Stipulation of Dismissal with the court following the payment of the settlement as set forth in paragraph 2 herein.

8. **No Prior Obligation to Make Payments; Adequate Consideration.** The Employee acknowledges and agrees that absent his signing this Agreement and complying with all terms of the Agreement, the Employer is not required by any policy, plan or prior agreement to pay the Settlement Payment and that the Settlement Payment constitutes adequate consideration to support his release of Claims in Paragraph 3 above.

9. **Non-Disparagement.** The Employee agrees that he will not make any negative comments or disparaging remarks, in writing, orally or electronically, about the Employer or any other Releasee, including their respective officers, directors, and employees. Nothing in this paragraph or this Agreement shall be interpreted to restrict or inhibit the Employee's right and obligation (i) to testify truthfully in any forum or (ii) to cooperate fully in any investigation by a governmental agency. Similarly, the Employer agrees that it will not make any negative comments or disparaging remarks, in writing, orally or electronically, about the Employee. Neither the Employee nor the Employer shall refer to themselves or to the other party as the winning or losing party regarding the Lawsuit.

10. **Counterparts; Entire Agreement; No Oral Modification.** This Agreement may be executed in counterparts, which together shall comprise the entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements, written or oral, expressed or implied. No other promises, agreements or amendments, or any separate agreement relating to the subject matter of this Agreement shall be binding or shall modify this Agreement unless expressed in writing and signed by all parties hereto. Signatures transmitted by facsimile machine or electronically in Portable Document Format (PDF) or similar software shall be treated as originals for purposes of this Agreement.

11. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey.

12. **No Admission of Liability.** Nothing in this Agreement shall be construed as an admission or concession of liability or wrongdoing by the Employer. Rather, this Agreement is being offered for the sole purpose of settling, cooperatively and amicably, the Lawsuit, as well as any and all possible current disputes between the parties.

13. **Severability.** Nothing in this Agreement is intended to violate any law or shall be interpreted to violate any law. If any paragraph or part or subpart of any paragraph in this Agreement or the application thereof is construed to be overbroad and/or unenforceable, then the court making such determination shall have the authority to narrow the paragraph or part or

subpart of the paragraph as necessary to make it enforceable and the paragraph or part or subpart of the paragraph shall then be enforceable in its/their narrowed form. Moreover, each paragraph or part or subpart of each paragraph in this Agreement is independent of and severable (separate) from each other. In the event that any paragraph or part or subpart of any paragraph in this Agreement is determined to be legally invalid or unenforceable by a court and is not modified by a court to be enforceable, the affected paragraph or part or subpart of such paragraph shall be stricken from the Agreement, and the remaining paragraphs or parts or subparts of such paragraphs of this Agreement shall remain in full, force and effect.

14. **Headings.** The headings contained in this Agreement are for convenience of reference only and are not intended, and shall not be construed, to modify, define, limit, or expand the intent of the parties as expressed in this Agreement, and they shall not affect the meaning or interpretation of this Agreement.

15. **Plain Meaning**. Each party has had the opportunity to revise, comment upon and redraft this Agreement. Accordingly, it is agreed that the terms and conditions of this Agreement shall be construed according to their plain meaning, as if the parties jointly prepared this Agreement, and any uncertainty or ambiguity shall not be interpreted or construed in favor of or against either the Employee or the Employer.

16. **Strict Adherence.** The failure of either party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of the Agreement.

17. **Who Is Bound.** All parties are bound by this Agreement and each of its provisions. Anyone who succeeds to their rights and responsibilities, such as their successors and assigns, as well as the Employee's heirs and the executor of his estate, also are bound. This Agreement is made for the benefit of all the parties hereto and all who succeed to their rights and responsibilities, and expressly includes their officials, employees, agents, attorneys, successors and assigns.

18. **Acknowledgements and Representations of the Employee.** The Employee agrees and represents that:

(a) he has read carefully the terms of this Agreement, including the General Release;

(b) he had an opportunity to and has been encouraged to review this Agreement, including the General Release, with his attorney, Richard P. Flaum, Esq.;

(c) he understands the meaning and effect of the terms of this Agreement, including the General Release;

(d) he was given at least 21 days to determine whether he wished to enter into this Agreement, including the General Release;

(e) the entry into and execution of this Agreement, including the General Release, is of his own free and voluntary act without compulsion of any kind;

(f) no promise or inducement not expressed herein has been made to him; and

(g) he has adequate information to make a knowing and voluntary waiver and release of claims.

19. **Revocation Period.** The Employee understands that he has the right to revoke this Agreement for a period of seven (7) days after his execution of this Agreement. ("Revocation Period"). If the Employee timely revokes this Agreement, the Employee is indicating that he does not want to be legally bound by this Agreement. The Agreement shall not be effective until after the Revocation Period has expired without the Employee having revoked it. To revoke this Agreement, the Employee must send a letter via first class regular mail to the attention of Richard Grodeck,esq at the law offices of Piro Zinna et al located at 360 Passaic Ave Nutley, NJ 07110. The letter must state that the Employee is revoking his agreement to enter into this Agreement and be post-marked within seven (7) days of the Employee's execution of this Agreement. If the seventh day is a Sunday or federal holiday, then the letter must be post-marked on the following business day. If the Employee revokes this Agreement on a timely basis, he shall not be eligible to receive the Settlement Payment set forth in Paragraph 2.

20. **Non-Agreement.** If this Agreement is not fully executed by all parties, or if the Employee notifies the Employer that he wishes to revoke this Agreement pursuant to Paragraph 20 above, then this Agreement shall become null and void and shall be of no effect and the parties will be left to their respective legal and contractual rights and remedies.

IN WITNESS WHEREOF, the parties hereto have executed ~~this Agreement in the~~ presence of a notary public:

Ch LMay

Christopher Lemay

Sworn to before me on this
30 day of October, 2015

Attorney of the State of New Jersey

Richard Flain

BOROUGH OF HALEDON

By: Domenick Stampone,
Mayor

10/28/15
Date

Witness

10/28/15
Date