

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE, (hereinafter referred to a "AGREEMENT" OR "Agreement") made this 4TH day of Oct, 2019 by and between FRANK MARCHIONE (hereinafter referred to as "MARCHIONE" and/or "PLAINTIFF"), and the BOROUGH OF HIGHTSTOWN (hereinafter referred to as the "BOROUGH" and or "DEFENDANT"), a governmental entity created pursuant to the laws of the State of New Jersey, whose principal offices are located at 156 Bank Street, Hightstown, New Jersey 08520, for the good and sufficient consideration set forth below as follows:

1. The "BOROUGH", as used herein, shall, at all times, mean the BOROUGH OF HIGHTSTOWN its subsidiaries, affiliates, designees, predecessors, successors and assigns of any and all of them, its present and former directors, officers, officials (elected and/or appointed), representatives, associates, partners, servants, employees, agents, attorneys, any and all contract managers in their corporate and individual capacities, heirs, executors and administrators, whether in their individual capacity, partnerships, corporations and/or any other entity connected therewith including liability insurance carriers. This applies to all parties, past, present and in the future.

2. "MARCHIONE", as used herein, shall mean FRANK MARCHIONE, his family, (by marriage and/or blood relation), relatives, heirs, representatives, designees, privies, executors, administrators, representatives, assigns, successors-in-interest and predecessors-in-interest.

3. In consideration for all of the provisions set forth in this Agreement, MARCHIONE and the BOROUGH agree as follows:

WHEREAS, PLAINTIFF, on or about May 16, 2019, filed a Motion to Enforce Settlement (hereinafter referred to as the "Motion") in the New Jersey Superior Court, Mercer County, Law Division, in a matter captioned as *FRANK MARCHIONE v. BOROUGH OF HIGHTSTOWN*,

bearing the Docket No. MER-L -002253-15 (hereinafter referred to as the "Action"), in which PLAINTIFF makes numerous allegations against the DEFENDANT regarding his entitlement to the payment of unused, accrued sick time that he alleges he was owed pursuant to the terms of the Settlement Agreement and General Release executed by the Parties on or about August 21, 2017, in settlement of the Action; and,

WHEREAS, the BOROUGH denies and continues to deny all of PLAINTIFF'S allegations; and,

WHEREAS, in order to avoid protected, costly litigation as to the Action; and,

WHEREAS, the Parties desire to resolve and settle fully and finally all of their past, present and any future claims, disputes or potential disputes that existed or may have existed, including but not limited to those relating to the subject matter of the Motion that was filed in the Action and those arising out of and/or related directly and/or indirectly to the allegations contained in the Motion; and,

WHEREAS, the terms, conditions and implications of this Agreement, including the Releases incorporated herein, have been explained to PLAINTIFF by his counsel; and,

WHEREAS, the parties desire to set forth all of the terms and conditions of their agreement in this Agreement; and,

WHEREAS, the parties understand and hereby acknowledge that the terms of the Agreement are subject to the execution by MARCHIONE and approval and execution of the appropriate officials of the BOROUGH.

NOW THEREFORE, in consideration of the promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which each of the Parties acknowledge, the Parties agree as follows:

AGREEMENT

1. Recitals. The foregoing Recitals are incorporated into and constitute a part of this Agreement.

2. Settlement.

a. In exchange for PLAINTIFF'S agreement to be bound by the terms of this entire Agreement, including but not limited to the General Release(s) set forth in Section 3 of this Agreement, the DEFENDANT agrees to pay the PLAINTIFF a total sum of Ten Thousand Dollars (\$10,000.00) made payable to FRANK MARCHIONE. All Parties agree that this payment is made exclusively for, and in complete satisfaction of, all the claims made or could be made by PLAINTIFF in regard to the Motion and all of the underlying subjects of same. PLAINTIFF acknowledges and agrees that the settlement referred to herein is:

i. in full and complete discharge of any and all claims or potential claims against DEFENDANT for any violation of any statutory obligation, employment agreement, collective bargaining agreement, professional responsibility, rules of conduct, policy, common law duties or obligations, any related expenses paid by PLAINTIFF, emotional distress, pain and suffering, discrimination, retaliation and/or any other claim for compensation in any form; and,

ii. is in full and complete discharge of any and all real, alleged or possible claims against DEFENDANT for damages of any kind whatsoever; and,

iii. fully and completely settles any and all claims by PLAINTIFF, or any attorney PLAINTIFF has retained to prosecute any and/or all of his claim(s) against the BOROUGH for attorneys' fees, costs, interest, disbursements and the like, up to and including the date of Payment under Section 2(a) above to PLAINTIFF.

b. PLAINTIFF agrees that neither he nor his legal counsel are entitled to, nor shall they seek, any further compensation from the DEFENDANT for any other amounts, damages, costs, disbursements and/or attorneys' fees whatsoever in connection with any of the issues/matters/provisions encompassed in this Agreement or that could be encompassed in this Agreement.

c. The DEFENDANT makes no representations regarding the Federal and/or State tax consequences of the payment referred to above and shall not be responsible for any tax liability, interest and/or penalty incurred by MARCHIONE or his counsel, which in any way arises out of or is related to this payment. MARCHIONE and his counsel agree to pay any and all amounts that may be determined as being due and owing as taxes, interest and penalties arising out of the payment referenced in this Section should it be determined that all or part of such payment constitute gross income to the PLAINTIFF or his counsel, within the meaning of the Internal Revenue Code of 1986, or the New Jersey State Taxation Code, as amended, and/or under any other Federal, State or local laws, statutes, regulations and/or ordinances. MARCHIONE and his counsel further agree to:

i. indemnify and hold harmless the DEFENDANT against, and to indemnify and hold harmless the DEFENDANT for any and all losses and/or damages arising from claims by the Internal Revenue Service and/or the New Jersey State Division of Taxation, or any other taxing authority of other governmental agencies (whether Federal, State, County or local) that may be made against the DEFENDANT arising out of or relating to DEFENDANT'S payment of the settlement amount as set forth in Section 2 of this Agreement; and,

ii. will reimburse DEFENDANT for any resulting payments, including without limitation, all penalties and interest payable to the Internal Revenue Service, or any other taxing authority or governmental agency. The parties further agree that the DEFENDANT will give PLAINTIFF'S counsel notice of any such claim and that PLAINTIFF and his counsel will cooperate with the DEFENDANT in the defense of such claim. In any action commenced against PLAINTIFF and/or his counsel to enforce the provisions of this paragraph, the DEFENDANT will be entitled to recover their attorneys' fees, interest costs, disbursements and any and all other relief as the Court may deem just and proper.

d. PLAINTIFF shall be solely responsible for payment of any claims and/or liens that may be asserted against the proceeds of this settlement. In the event a claim or lien for such payment is asserted by anyone, including Medicare and/or Medicaid, PLAINTIFF agrees to make those payments and to defend and indemnify DEFENDANT against any such claim or lien, including the payment of any fines, interest, penalties, charges and attorneys' fees. Failure to satisfy any such lien shall constitute a breach of this Agreement and PLAINTIFF agrees to pay all costs, penalties, damages, interest and attorneys' fees associated with any such claim or lien.

3. GENERAL RELEASE(S).

a. For and in consideration of the settlement figure referenced in Section 2 of this Agreement, and upon the full execution of this Agreement by all parties, PLAINTIFF, on behalf of himself, his agents, heirs, administrators, attorneys, successors and assigns, hereby dismiss, release and forever discharges DEFENDANT and/or any of DEFENDANT'S agents, former and current members of the governing body, officers,

directors, employees, insurers, attorneys, predecessors, successors and assigns, from any and all debts, dues, sums of money, covenants, controversies, agreements, promises, trespasses, damages, losses, expenses, costs, liabilities, obligations, claims, demands, judgments, complaints, grievances, causes of action or liabilities in tort, contract, by statute, suits, decrees, executions of whatever kind, in law or in equity, absolute, contingent, likely or unlikely, known or unknown, that have existed from the beginning of time to the date of this Agreement, including but not limited to any and all claims for attorneys' fees, costs or other expenses, or on any basis they have or have had, for anything that has occurred up to and including the full execution date of this Agreement by all parties.

b. MARCHIONE further releases, acquits, gives up and forever discharges any and all claims and rights that he may have against the BOROUGH up to the time of complete execution of this AGREEMENT by all parties. This releases any and all claims, including those of which MARCHIONE is not aware and those not mentioned in this AGREEMENT. This AGREEMENT applies to claims resulting from anything that has happened from MARCHIONE's first (1st) date of employment with the BOROUGH through the date of complete execution of this AGREEMENT by all parties. MARCHIONE specifically releases the following claims:

- 1) Any resolution, collective bargaining agreement, ordinance, policy, practice and/or procedure addressing, specifically or generally, MARCHIONE'S employment with the BOROUGH;
- 2) The National Labor Relations Act;
- 3) Title VII of the Civil Rights Act of 1964;

- 4) Sections 1981 through 1988 of Title 42 of the United States Code (Civil Rights Act of 1871);
- 5) Civil Rights Act of 1991;
- 6) The Americans with Disabilities Act ("ADA");
- 7) The Rehabilitation Act of 1973;
- 8) The Age Discrimination in Employment Act ("ADEA");
- 9) The Fair Labor Standards Act ("FLSA");
- 10) The Occupational Safety and Health Act ("OSHA") and the New Jersey Public Employee Occupational Safety and Health Act ("NJPEOSHA");
- 11) The Equal Pay Act;
- 12) The Employee Retirement Income Security Act ("ERISA");
- 13) The New Jersey Law Against Discrimination ("LAD");
- 14) The New Jersey Conscientious Employee Protection Act ("CEPA");
- 15) Family and Medical Leave Act (Federal) and the Family Leave Act (New Jersey);
- 16) The Federal and New Jersey State Wage and Hour Acts;
- 17) The Federal and New Jersey State Equal Pay Law;
- 18) The New Jersey Civil Rights Act;
- 19) The New Jersey Employer-Employee Relations Act;
- 20) 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;
- 21) Any claims under public policy, contract (express, written, implied or oral), tort and/or common law;

- 22) Any claims for terminal, vacation, sick and/or personal leave with or without pay or payment pursuant to any practice, policy, handbook or manual of the BOROUGH;
- 23) Any allegation for costs, fees or other expenses, including but not limited to attorneys' fees; and/or,
- 24) ANY AND ALL CAUSES OF ACTION, CLAIMS OR DAMAGES, WHETHER KNOWN OR UNKNOWN AS OF THE DATE OF EXECUTION OF THIS AGREEMENT, ARISING FROM OR RELATING IN ANY WAY TO ANY AND/OR ALL PORTIONS OF MARCHIONE'S EMPLOYMENT WITH THE BOROUGH, FROM THE FIRST (1st) DATE OF HIS EMPLOYMENT WITH THE BOROUGH THROUGH AND INCLUDING THE DATE OF COMPLETE EXECUTION OF THIS AGREEMENT BY ALL PARTIES.

This covers any and all amendments and supplements to any and/or all such laws, statutes, rules and/or regulations referenced above. Claims which are required by statute (such as workers compensation claims) which were in existence as of the full execution date by both parties to this AGREEMENT are hereby preserved.

c. PLAINTIFF hereby acknowledges that the General Release provided in this Section 3 above of this Agreement includes, but is not limited to, all claims and/or allegations asserted or that could have been asserted relative to the Motion and/or in the Action, as well as any and all claims arising under Federal, State and/or local laws, rules, regulations and statutes claims arising under the common law, and any other claims arising in any way from the facts and circumstances related directly and/or indirectly to the allegations made against DEFENDANT in the Motion and/or in the Action from the

beginning of time through the full execution date of this Agreement by all parties. PLAINTIFF hereby expressly waives and releases any and all claims against DEFENDANT arising under any and all common law claims, including but not limited to, negligence, as well as any and all claims for compensatory and punitive damages and attorneys' fees, costs and/or other expenses incurred by PLAINTIFF'S current or former attorney(s) in pursuit of any claim or in negotiation of this Agreement.

d. PLAINTIFF hereby acknowledges that the General and Express Releases set forth in Section 3 of this Agreement are intended to have the broadest possible application and includes, but is not limited to, any tort, contract, common law, constitutional or other statutory claims arising out of any Federal, State or local laws. The release set forth herein shall apply to the present and future members of the governing body, officers, directors, attorneys, agents, insurers, servants, members, representatives, employees, subsidiaries, subcontractors, contractors, affiliates, partners, family members, predecessors, and successors in interest and assigns of the parties.

e. PLAINTIFF shall withdraw, with prejudice, his Motion filed in the Action filed in the New Jersey Superior Court, Mercer County, Law Division, bearing the Docket No. MER-L -002253-15.

4. ADMISSIONS.

PLAINTIFF and the DEFENDANT acknowledge that the Parties entered into this Settlement Agreement and General Release solely to avoid expensive, burdensome and protracted litigation. This Settlement Agreement and General Release is not intended to be used and shall not be used as evidence of or for any other purpose in any action or proceeding, other than evidence of the compromise between PLAINTIFF and the DEFENDANT as set forth herein or to enforce

the terms of this Settlement Agreement and General Release. No party admits to any wrongdoing and/or any liability as to any/or all of their actions regarding each other.

5. COSTS AND EXPENSES.

The Parties shall be responsible for their respective attorneys' fees and costs and expenses incurred in this matter.

6. NO FILING OF CLAIMS.

PLAINTIFF represents and warrants that, except for this Action, he has not prepared or otherwise does not presently have on file, any claims, charges, grievances or complaints against DEFENDANT in or with any administrative, State, Federal or governmental agency, board or court, or before any other tribunal or panel of arbitrators, public or private, based upon or in any way related to any actions or omissions by DEFENDANT occurring prior to the full execution by all parties to this Agreement.

7. NO ADMISSION OF LIABILITY.

DEFENDANT expressly denies any wrongdoing in connection with or relating to PLAINTIFF'S allegations in the Motion that he has filed in the Action. This Agreement is entered into as an expedient and cost-effective alternative to costly litigation and nothing contained herein shall constitute or be treated as an admission of any wrongdoing or liability, express or implied, on the part of the DEFENDANT. Furthermore, this Agreement shall not constitute nor be treated as an admission that the DEFENDANT violated any Federal, State or local law, statute, rule or regulation or any common law right sounding in tort or contract or otherwise.

8. UNDERSTANDING OF AGREEMENT AND EFFECTIVE DATE.

PLAINTIFF represents and warrants that he has read this Agreement; that he has consulted with his counsel concerning the meaning and application of this Agreement; that he understands

its meaning and application; and, that he is signing this Agreement on his own free will, with the benefit and advice of counsel, and with the intent to be bound by it. PLAINTIFF further understands that this Agreement shall become valid and, in effect and fully enforceable when executed by both PLAINTIFF and DEFENDANT.

9. SUCCESSORS AND ASSIGNS.

All parties expressly understand and agree that this Agreement and all of its terms shall be binding upon and inure to the benefit of their representatives, heirs, executors, administrators, successors and assigns.

10. CONSULTATION WITH COUNSEL.

PLAINTIFF acknowledges that he has consulted with and been advised by Seth D. Josephson, Esquire, his counsel in the Action, prior to the execution and delivery of this AGREEMENT.

11. INTEGRATION.

Except as otherwise specifically provided for, the Parties acknowledge and agree that this Agreement constitutes the full, complete and entire Agreement between the Parties; that this Agreement fully supersedes any and all prior agreements or understandings between the Parties and that there are no other representations, covenants, warranties or other agreements binding of the parties that are not expressly set forth herein.

12. COUNTERPARTS.

This Agreement may be executed in separate counterparts and by facsimile or scanned PDF and each such counterpart shall be deemed an original with the same effect as if all Parties had signed the same document.

13. HEADINGS.

The headings in each Section herein are for convenience of reference only and shall be of no legal effect in the interpretation of the terms hereof.

14. SEVERABILITY.

If any term, provision or condition of this AGREEMENT 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 AGREEMENT, provided that the essential consideration received by each party is not eliminated or reduced as a result of such a declaration of invalidity.

15. AMENDMENTS.

This AGREEMENT cannot be altered and/or otherwise amended except by written instrument signed by all of the parties hereto.

16. GOVERNING LAW; VENUE.

This AGREEMENT shall be construed and interpreted in accordance with the laws of the State of New Jersey. The Parties hereby irrevocably consent to personal jurisdiction and venue in the Superior Court of New Jersey, Mercer County, for any and all claims arising out of this AGREEMENT over which that court has subject matter jurisdiction.

17. RULE OF CONSTRUCTION.

The Parties acknowledge and agree that they have each had the opportunity to have this Agreement reviewed by counsel of their choosing. Therefore, the normal rule that ambiguities are construed against the drafter shall not apply in connection with the interpretation and construction of this Agreement.

18. REPRESENTATIONS.

The Parties hereby represent that the undersigned are fully authorized to execute this Agreement and that all formalities attendant to the execution have been satisfied.

19. NON-DISPARAGEMENT CLAUSE.

The PLAINTIFF agrees, to the extent permitted by law, that no disparaging, negative or derogatory remarks, written, oral or otherwise, regarding the DEFENDANT shall be disclosed to any third party, except as may be required by law or court order.

20. NOTICES.

All notices, demands and requests that 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 THE DEFENDANT:

Eric M. Bernstein, Esquire
ERIC M. BERNSTEIN & ASSOCIATES, L.L.C.
34 Mountain Boulevard, Building A
P.O. Box 4922
Warren, New Jersey 07059-4922

AND

Frederick C. Raffetto, Esquire
Ansell Grimm & Aaron
1500 Lawrence Avenue, CN 7807
Ocean, New Jersey 07712

CC FOR:

Debra L. Sopronyi, RMC/QPA/CMR, Administrator/Borough Clerk
Borough of Hightstown
156 Bank Street
Hightstown, New Jersey 08520

FOR FRANK MARCHIONE:

Seth D. Josephson, Esquire
196 Princeton-Hightstown Road
Suite 10, Building 2
Princeton Junction, New Jersey 08550

**IN WITNESS WHEREOF, FRANK MARCHIONE and BOROUGH OF
HIGHTSTOWN** have hereunto set their hands this _____ day of _____
2019.

Witness:

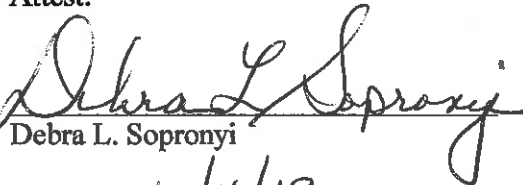
FRANK MARCHIONE

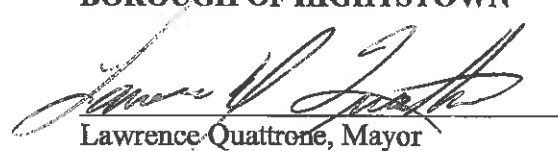
Dated: _____

Frank Marchione
Dated: _____

Attest:

BOROUGH OF HIGHTSTOWN


Debra L. Sopronyi


Lawrence Quattrone, Mayor

Dated: 10/4/19

Dated: 10/4/19

STATE OF NEW JERSEY :
: SS.:
COUNTY OF :

I, _____, a Notary Public, do hereby certify that FRANK
MARCHIONE, personally known to me to be the same person whose name is subscribed to the
foregoing instrument, appeared before me this day in person and acknowledges that she signed
and delivered the said instrument as her free and voluntary act, for the uses and purposes set forth
therein.

Given under my hand and official seal this _____ day of _____, 2019.

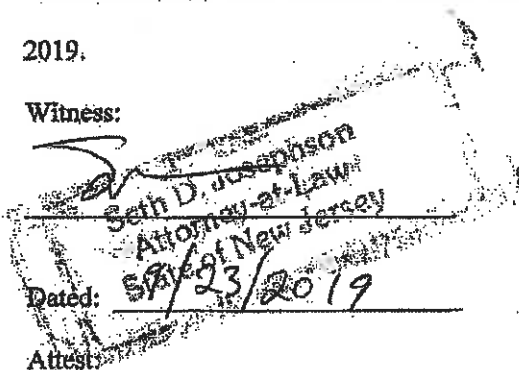
Notary Public

FOR FRANK MARCHIONE:

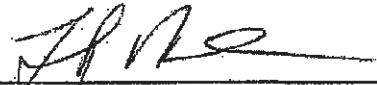
Seth D. Josephson, Esquire
196 Princeton-Hightstown Road
Suite 10, Building 2
Princeton Junction, New Jersey 08550

IN WITNESS WHEREOF, FRANK MARCHIONE and BOROUGH OF
HIGHTSTOWN have hereunto set their hands this 23 day of September
2019.

Witness:


Seth D. Josephson
Attorney-at-Law
State of New Jersey
Dated: 9/23/2019
Attest:

FRANK MARCHIONE


Frank Marchione

Dated: 9/23/19

BOROUGH OF HIGHTSTOWN

Debra L. Sopronyi

Lawrence Quattrone, Mayor

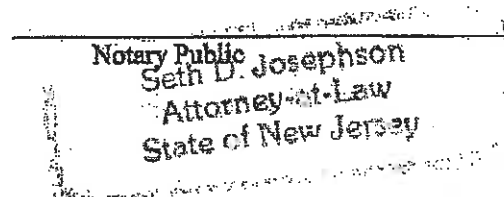
Dated: _____

Dated: _____

STATE OF NEW JERSEY :
: SS.:
COUNTY OF MERCER :

I, SETH JOSEPHSON ATT. AT LAW, a Notary Public, do hereby certify that FRANK
MARCHIONE, personally known to me to be the same person whose name is subscribed to the
foregoing instrument, appeared before me this day in person and acknowledges that she signed
and delivered the said instrument as her free and voluntary act, for the uses and purposes set forth
therein.

Given under my hand and official seal this 23 day of September, 2019.


Notary Public
Seth D. Josephson
Attorney-at-Law
State of New Jersey