

PRIVILEGED AND CONFIDENTIAL
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CONFIDENTIAL

FULL AND FINAL
SEPARATION AND RELEASE AGREEMENT

This Separation and Release Agreement (hereinafter referred to as the "Agreement") is entered into as of the 28th day of February, 2020, by and between the **Wayne Township** ("Employer" or "Township") and **Daniel DuBois**, (hereinafter "DuBois" or the "Employee") (the Township and DuBois are collectively referred to herein as the parties, or individually as the party).

WHEREAS, DuBois is presently employed as a Sergeant in the Township's Police Department; and

WHEREAS, DuBois is presently on paid administrative leave in connection with an on-going internal affairs investigation; and

WHEREAS, the parties wish to reach a full and final resolution of all matters related to the employment relationship between them.

NOW THEREFORE, in consideration of the mutual promises of the parties to this Agreement, the receipt and sufficiency is hereby acknowledged, the parties agree as follows:

1. IRREVOCABLE SEPARATION FROM EMPLOYMENT

a. DuBois will be placed on a paid terminal leave beginning February 17, 2020 and ending October 31, 2020 and shall perform no services for the Township while on paid terminal leave.

b. DuBois shall immediately provide the Township with an irrevocable letter of resignation/retirement, effective November 1, 2020, which the Township shall administratively accept. Accordingly, DuBois shall not be considered an employee of the Township after November 1, 2020.

c. DuBois shall not seek reemployment with the Township in any capacity.

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- d. The Township Police Department shall administratively close the pending internal affairs investigation and shall not proffer any disciplinary charges against DuBois.
- e. The Township shall provide DuBois with any and all contractual retirement benefits as set forth in the collective negotiations agreement between the Township and PBA 136A (January 1, 2015 – December 31, 2020), including retiree health benefits coverage as set forth in Article X.
- f. All Township equipment and property in the possession of DuBois, including, but not limited to communication devices, keys, identification cards, and/or equipment will be returned to the Township as of his signing this Agreement.
- g. DuBois acknowledges that he is not entitled to any other remuneration other than what is specified in this Agreement.
- h. The Township shall not contest DuBois's retirement application, which shall be effective November 1, 2020. The Township makes no promises and/or commitments regarding the New Jersey Division of Pensions and Benefit's disposition of DuBois's retirement application. Moreover, this Agreement and DuBois's retirement/resignation is not contingent on the New Jersey Division of Pensions and Benefit's disposition of DuBois's retirement application.
- i. This Agreement is entered into with the understanding that this Agreement and the negotiations leading up to it shall not be precedent setting in any grievance, action or proceeding of any kind between the Township and any employee or officer of the Township.

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2. COMPLETE RELEASE AND COVENANT NOT TO SUE

In consideration of the Agreement hereinabove, DuBois, his heirs, assigns and agents (hereinafter referred to collectively as "DuBois") voluntarily enters into this Agreement, and DuBois certifies that he has not been threatened or coerced into signing this Agreement, on the terms which follow:

a. DuBois hereby releases, waives and discharges the Township, its affiliated departments, and its officers, trustees, agents, employees, successors and assigns (hereinafter collectively referred to as the "Releasees") from each and every claim, demand, cause of action, obligation, damage, complaint, or action or writ of any kind, nature, character or description that DuBois had, now has, or may in the future have against the Releasees on account of or arising out of any matter or thing that has happened, developed or occurred prior to the date of this Agreement including, but not limited to, the employment of DuBois. This Complete Release includes, but is not limited to, any claim, demand, cause of action, obligation, claim for damages of any kind, complaint, expense, compensation, or action or writ of any kind, nature, character or description arising out of or under Federal, State or municipal statute or ordinance and any other law (whether such be common law, decisional law or statutory law), rule, regulation, executive order or guideline, and any and all claims for attorney's fees and costs arising from the above acts including, but not limited to:

i. Any claim, cause of action, demand or complaint arising out of or under the New Jersey Law Against Discrimination (NJLAD) which, among other things, prohibits discrimination in employment on the basis of an individual's race, creed, color, religion, sex, national origin, ancestry, age, marital status, affectional or sexual orientation,

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familial status, handicap, atypical hereditary cellular or blood trait or liability for service in the Armed Forces of the United States.

ii. Any federal claim, cause of action demand or complaint arising out of or under the Federal Title VII of the Civil Rights Act of 1964 (Title VII) or the Civil Rights Act of 1991, as amended, which, among other things, prohibit discrimination in employment on account of a person's race, color, religion, sex or national origin.

iii. Any claim, cause of action, demand or complaint arising out of or under the New Jersey Conscientious Employee Protection Act (CEPA) (N.J.S.A. 34:19-1 et seq.), which, among other things, prohibits retaliation based on an employee engaging in protected conduct.

iv. Any claim, cause of action, demand or complaint arising out of or under the federal Worker Adjustment and Retraining Notification (WARN) Act (29 U.S.C. § 2101 et seq.), and/or equivalent State law, such as the New Jersey Millville Dallas Airmotive Plant Job Loss Notification Act (commonly referred to as the NJ WARN) (N.J.S.A. 34:21-2 et seq.), which, among other things, requires employers to provide employees with advance notice of business closing or mass layoff from the employer.

v. Any claim, cause of action, demand or complaint arising out of or under the Federal Age Discrimination in Employment Act of 1967, as amended (ADEA), which among other things, prohibits discrimination in employment on account of a person's age.

vi. Any claim, cause of action, demand or complaint arising out of or under the Federal Americans with Disabilities Act (ADA), which, among other things, prohibits discrimination in employment on account of a person's disability or handicap.

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vii. Any claim, cause of action, demand or complaint arising out of or under the Federal Family and Medical Leave Act (FMLA) which, among other things, entitles an employee to take reasonable leave for medical reasons for the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition and any claim, cause of action, demand or complaint arising out of under the New Jersey Family Leave Act (NJFLA).

viii. Any claim, cause of action demand or complaint arising out of or under the Federal Rehabilitation Act of 1973, as amended, which among other things, prohibits discrimination in employment by Federal contractors against individuals with disabilities.

ix. Any claim, cause of action, demand or complaint arising out of or under the Federal Employee Retirement Income Security Act of 1974, as amended (ERISA), which among other things, regulates pension and welfare plans and prohibits interference with individual rights protected under that statute.

x. Any claim, cause of action, demand or complaint arising out of or under the Federal Older Workers Benefit Protection Act (OWBPA) which, among other things, amends provisions of ADEA and prohibits discrimination in employment and employment benefits on account of a person's age.

b. DuBois waives the right to any money damages with respect to any claim, charge or complaint of any nature with the New Jersey Division on Civil Rights and the U.S. Equal Employment Opportunity Commission (EEOC). DuBois has not filed and shall not hereafter file any claim, charge or complaint of any nature with the New Jersey Public

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Employment Commission (PERC) or with any Federal, State or local court or agency against the Releasees.

c. If DuBois violates this Complete Release by filing any claim, charge or complaint as prohibited above, DuBois agrees to pay all costs and expenses of defending against the suit incurred by the Township and/or the Releasees, including reasonable attorney's fees and all costs associated with a judicial determination that DuBois violated the Agreement and Release.

d. This Release specifically excludes claims arising under the New Jersey Workers' Compensation Act, the Teachers and Pensions Annuity Fund ("TPAF"), and any claims arising from the parties' breach of this Agreement. DuBois certifies that he is unaware of any factual basis for such claims as of the date of the signing of this Agreement.

3. CONFIDENTIALITY.

All parties shall not disclose, either directly or indirectly, in any manner whatsoever, any information regarding the existence of the terms or contents of this Separation and Release Agreement, to any third party, person or organization, including but not limited to, any governmental agency, members of the press and media, present and former officers, employees and agents of the Township and other members of the public. This paragraph shall not preclude the parties from discussing the existence or terms of this Separation and Release Agreement to governmental authorities who require such information by subpoena duly issued by a court or agency within competent jurisdiction. In addition, DuBois may make disclosures regarding this Agreement to members of his immediate family, his attorneys, his union representative and as may be required to his accountant and/or financial advisor. Additionally, this paragraph shall not preclude the parties from disclosing the Agreement as required by law and/or a court of competent jurisdiction. Although the Parties agree to keep the settlement and underlying facts

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confidential, this provision is unenforceable against the Township if the Employee decides to reveal settlement and claim details in such a way that the Employer is reasonably identifiable.

4. MUTUAL NON-DISPARAGEMENT.

DuBois agrees that, in any communications with the press, other media or any other individual, he shall not criticize, ridicule or make any statement which disparages or is derogatory of the Township or its employees, elected officials, directors or senior officials. Likewise, the Township and its senior officials will not criticize, ridicule or make any statement which disparages or is derogatory of DuBois. In the event of any inquiries into this matter, the parties shall respond that DuBois retired in good standing from his employment.

5. INDEMNIFICATION.

If there is a judicial determination that DuBois or the Township violated this Agreement in any way, then the violating party agrees to pay, in addition to all other remedies allowed by law or this Agreement, all costs and expenses incurred by the non-violating party as a result of such violation, including reasonable attorney's fees.

6. CONSULTATION WITH ATTORNEY.

DuBois has had an opportunity to consult with his attorney with respect to this Agreement and has had an opportunity to review with his Attorney all of the terms and conditions of this Agreement prior to executing this Agreement.

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7. COMPLETE AGREEMENT.

This Agreement contains the entire agreement between DuBois and the Township with respect to the subject matter and supersedes all prior agreements, understandings and/or dealings whether written or otherwise with respect to the same subject matter. There is no agreement on the part of the Township to do anything other than what is expressly stated in this Agreement. It is understood, between and among all parties hereto, that the terms of this Agreement shall not have any precedential effect or constitute binding practice.

8. MODIFICATION.

No modification or amendment of this Agreement will be enforceable unless it is in writing and signed by an authorized agent or officer of the Township and Daniel DuBois.

9. SEVERABILITY.

Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity, and enforceability of the remaining parts, terms, or provisions shall not be affected thereby. Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid and/or unenforceable, the parties will make reasonable efforts to reform that provision(s) to be legal, valid and enforceable.

10. ATTESTATION.

DuBois represents and warrants that he has carefully read each and every provision of this Agreement and that he fully understands all of the terms and conditions contained in each provision of this Agreement. DuBois represents and warrants that he enters into this Agreement voluntarily, of his own free will, without any pressure or coercion from any person or entity including, but not limited to the Township.

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11. GOVERNING LAW.

This Agreement shall in all respects be interpreted, enforced and governed by the Laws of the State of New Jersey.

12. VENUE.

Any controversies or disagreements arising out of, or relating to this Agreement or the breach thereof, shall be resolved in the Passaic County Superior Court of New Jersey.

13. REVOCATION.

DuBois may revoke this Agreement within seven calendar (7) days after the date this Agreement is signed by DuBois. This revocation must take the form of written notice by DuBois, which specifically indicates that he intends to revoke this Agreement. This revocation must be provided to the Township, c/o Chief John McNiff. This seven (7) day revocation period may not be waived. In the event DuBois revokes his acceptance of this Agreement, any and all payments to DuBois from the Township made pursuant to this Agreement must be returned with the written letter of revocation.

14. REASONABLE PERIOD OF TIME.

DuBois agrees that he has been given a reasonable period of time of at least twenty-one (21) days to consider the Separation and Release Agreement before executing it, that any changes thereto subsequently agreed upon by the parties, whether material or immaterial, do not restart this period for consideration, and that by signing and returning the Separation and Release Agreement before the end of the twenty-one (21) day period, he will have knowingly and voluntarily waived the right to consider the Separation and Release Agreement for the full consideration period (See Exhibit "B" attached hereto); and

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15. PRECATORY PHRASES.

The precatory phrases ("whereas clauses") are not mere recitals, but are specifically agreed to by the Parties and are incorporated herein by reference.

BY SIGNING BELOW, THE PARTIES ACKNOWLEDGE THAT EACH HAS READ THE TERMS OF THIS AGREEMENT, UNDERSTANDS THE TERMS OF THIS AGREEMENT AND INTENDS TO BE LEGALLY BOUND BY THIS AGREEMENT AND ITS PROVISIONS. ADDITIONALLY, THE PARTIES ARE SIGNING BELOW VOLUNTARILY AND WITHOUT THREAT OR COERCION OF ANY KIND.

IN WITNESS WHEREOF, and intending to be legally bound hereby, I, Daniel DuBois, executed the foregoing Agreement this 28th day of February, 2020.

Sworn and Subscribed to before me
this 9th day of March, 2020.

Daniel DuBois
DANIEL DUBOIS

Alexis Macchiarelli
Notary Public of the
State of New Jersey
ALEXIS MACCHIARELLI
A Notary Public of New Jersey
My Commission Expires 11/15/22

Wayne Township 3/9/2020
WAYNE TOWNSHIP

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EXHIBIT A

Date: February 28, 2020

I, Daniel DuBois, do hereby submit my irrevocable letter of resignation/retirement effective midnight on October 31, 2020.


Daniel DuBois

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EXHIBIT B

WAIVER

By signing below, the undersigned hereby irrevocably elects to waive the 21-day period referred to in Paragraph 14 of this Agreement.

Date: February 28, 2020


Daniel DuBois