



Township Council
 1 Municipal Plaza
 Bloomfield, NJ 07003

Louise M. Palagano
 Municipal Clerk

http://www.bloomfieldwpnj.com

Meeting: 08/11/14 07:00 PM

2014 RESOLUTION AGREEMENTS

SETTLEMENT AGREEMENT

WHEREAS, employee #04581 has filed a Notice of Claim against the Township of Bloomfield; and

WHEREAS, the Parties have determined that it is in their best interests to resolve all matters.

NOW, THEREFORE BE IT RESOLVED, that the Mayor and Council of the Township of Bloomfield, County of Essex, State of New Jersey, hereby authorizes the Mayor to sign and the Township Clerk to attest the Settlement Agreement with employee #04581.

* * * * *

I hereby certify that the above resolution was duly adopted by the Mayor and Council of the Township of Bloomfield at a meeting of said Township Council held on August 11, 2014.

Louise M. Palagano

 Municipal Clerk of the Township of Bloomfield

Michael J. Venezia

 Mayor of the Township of Bloomfield

| ✓ Vote Record - Resolution 3832 | | | | | | |
|--|-------------------------------------|--------------------------|--------------------------|--------------------------|--|--|
| | Yes/Aye | No/Nay | Abstain | Absent | | |
| <input checked="" type="checkbox"/> Adopted | | | | | | |
| <input type="checkbox"/> Adopted as Amended | | | | | | |
| <input type="checkbox"/> Defeated | | | | | | |
| <input type="checkbox"/> Withdrawn | | | | | | |
| <input type="checkbox"/> Tabled | | | | | | |
| <input type="checkbox"/> Approved | | | | | | |
| <input type="checkbox"/> Approved by Consensus | | | | | | |
| <input type="checkbox"/> Not Discussed | | | | | | |
| <input type="checkbox"/> Tabled with No Vote | | | | | | |
| <input type="checkbox"/> Discussed | | | | | | |
| <input type="checkbox"/> Veto by Mayor | | | | | | |
| <input type="checkbox"/> Approved No Vote | | | | | | |
| <input type="checkbox"/> Deferred | | | | | | |
| Elias N. Chalet | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | |
| Nicholas Joanow | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | |
| Carlos Bernard | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | |
| Wartyna Davis | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | |
| Joseph Lopez | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | |
| Carlos Pomares | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | |
| Michael J. Venezia | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | |

APPROVED AS TO FORM AND PROCEDURE
 ON BASIS OF FACTS SET FORTH

Brian A. ...
 Director of Law - Township Attorney

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and Release [hereinafter, the "Agreement"] is made by and between the Township of Bloomfield, Essex County, New Jersey and James Behre, who resides at 16 Central Place, Caldwell, New Jersey, 07006, both individually and in his capacity as an employee (Police Captain and Chief of Police and any other position to which he may have a claim) for the Township of Bloomfield, Essex County, New Jersey.

PARTIES

"Behre" as used herein shall mean James Behre, who resides at 16 Central Place, Caldwell, New Jersey 07006, individually and in his capacity as an employee (Police Captain and Chief of Police and any other position to which he may have a claim) for the Township of Bloomfield, Essex County, New Jersey, his heirs, representatives, privies, executors, administrators, assigns, successors-in-interest and predecessors-in-interest.

"Bloomfield" as used herein shall mean the Township of Bloomfield, Essex County, New Jersey, its elected officials, employees, attorneys, affiliates, former or current directors, officers, officials, administrators, representatives, associates, partners, servants, agents, trustees, supervisors, legal representatives, insurers, any and all benefit plans, and successors and assigns, and each of them and their successors, whether in their individual or official capacities, and all other persons, firms, corporations, associations, partnerships or any other entity connected therewith and all predecessors, successors and assigns of any and all of them.

Behre and Bloomfield are collectively referred to herein as the "Parties."

BACKGROUND

WHEREAS, Behre is employed by Bloomfield as a sworn law enforcement officer; and

WHEREAS, on or around March 7, 2014, Behre filed a Notice of Tort Claim [hereinafter, the "NOTC"] against the Township of Bloomfield, Mayor Michael Venezia, Councilman Carlos Bernard, and Township Administrator Ted Ehrenburg alleging, *inter alia*, a violation of the Conscientious Employee Protection Act and unlawful retaliation for Behre's lawful exercise of his constitutional right to expose official misconduct and wrongdoing in the Bloomfield Police Department [hereinafter, the "Department"]. Behre alleged that this harassment and retaliation included, but was not limited to, an unlawful suspension, an unwarranted fitness-for-duty examination, a hostile work environment, disparate treatment, intense surveillance, and irreparable damage to his reputation and future employment opportunities; and

WHEREAS, Behre has alleged that he incurred substantial and ongoing damages relating to his employment by Bloomfield; and

WHEREAS, Bloomfield denies all allegations made by Behre and asserts Bloomfield has treated Behre fairly, appropriately, and that Behre's claims are without any merit; and

WHEREAS, the Parties desire to settle with prejudice all claims, disputes or causes of action which may exist between them, known or unknown, asserted or unasserted, based on any facts, events, acts or omissions, whether now known or unknown, occurring on or before the effective date of this Agreement, without any judicial, administrative, or arbitral resolution of them and without any admission with respect to any issues presented or capable of being presented.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, and intending to be legally bound, the Parties agree as follows:

1. **Non-Admission.** This Agreement is not, and shall not in any way be considered or construed as an admission by Behre or Bloomfield of discrimination, retaliation, tortious conduct, or of any violation of any law, common law, or federal, state or local statute or regulation, or of any employment policy, practice, contract or agreement, or of any alleged duty owed by Bloomfield or Behre to one another, or of any unlawful or wrongful acts whatsoever by either of the Parties. The payments and acts described hereunder are made solely to avoid the inconvenience and cost of litigation and to resolve completely all of Behre's claims against Bloomfield, and Bloomfield's claims against Behre, known or unknown, asserted or unasserted, as more fully detailed in Paragraph 8, below.

2. **Cooperation.** The Parties agree to cooperate fully with each other in connection with any steps required to be taken as part of their obligations under this Agreement and to act in good faith toward the other in light of their ongoing employment relationship.

3. **Dismissal of Claims and Agreement not to Sue.** Behre agrees that neither he, nor any person, organization, agency, or other entity on his behalf, will file, charge, claim or sue, or cause to be filed, charged, claimed or sued, any lawsuit, legal proceeding, grievance, administrative complaint, action or claim of any nature with any court, administrative agency, judicial or quasi-judicial forum (including any action for damages, attorney's fees, injunction, declaratory, monetary, equitable or other relief) against Bloomfield, based on any matter, fact or event occurring prior to the effective date of this Agreement, whether now known or unknown, or involving any continuing effects of any acts or practices which may have arisen or occurred prior to the effective date of this Agreement, whether now

known or unknown. The Parties understand and agree that neither party will be considered a prevailing party under any statute, common law, or otherwise as a result of this Agreement.

4. **Payment.** In exchange for the promises, agreements, and legal releases stated herein, and other good and valuable consideration, within thirty (30) days of the effective date of this Agreement, Behre will be paid a one-time, lump sum payment of Fifteen Thousand Dollars (\$15,000) for the attorney's fees he has incurred in connection with his NOTC (the "Payment"). The Payment of \$15,000 will not be subject to any withholdings, and Bloomfield will issue a 1099 form to Behre for the amount of \$15,000.00. The Payment shall be made to the Law Offices of Gina Mendola Longarzo in Trust for James Behre. Any and all taxes or other withholdings shall be the sole responsibility of Behre.

5. **Tax Indemnification.** Behre represents and warrants that neither Bloomfield nor counsel to the Parties provided any advice regarding the taxability of the settlement amount paid pursuant to Paragraph 4. Behre acknowledges and agrees that he is solely responsible for payment of any and all federal, state and local taxes which may be due from the settlement sum in the event that it is determined that any taxes are owed based on the taxation laws in effect on the date of execution of this Agreement or become due at any time in the future because of a change to the laws governing the taxation of such settlement proceeds. Behre agrees to indemnify and hold Bloomfield and counsel to this Agreement harmless from any and all federal, state and local tax liabilities, deficiencies, levies, interest and penalties that may be assessed should he fail to properly make any payments, including state and federal taxes, to which the Payment may be subject.

6. **Appointment to Police Director – Leave of Absence as Police Officer/Captain.** Approval of this Agreement by the Township Council shall act as Behre's

appointment as the Police Director of the Department, effective August 21, 2014. Execution of this Agreement shall act as Behre's irrevocable resignation from the temporary position of Police Chief and as his return to the permanent position of Police Captain, irrevocable waiver of the right to sue and irrevocable general release of all claims based on events occurring before the effective date of this Agreement. To accept the appointment as Police Director, Behre will take a leave of absence from his non-civilian employment with the Department, which the Township shall record with the Civil Service Commission. The Township will use its best efforts to ensure that the leave of absence is properly recorded with and approved by the Civil Service Commission. If for any reason, the Civil Service Commission does not approve Behre's request for a leave of absence, this Agreement shall remain in effect and Behre shall be entitled to return to his position as Police Captain and receive the benefits as reflected in the Union contract or accept the civilian appointment to the newly created position of Police Director with the benefits as reflected herein. As Director, Behre shall be paid a salary of \$165,553/annum plus longevity to be paid bi-weekly in equal installments. As Director, Behre shall receive the following benefits: 25 vacation days, 5 personal days, and 15 sick days. All of Behre's unused accumulated vacation, personal, sick, month and compensatory time accrued while employed as an officer for the Department, as reflected in the August 5, 2014 Memorandum of Captain Michael Miceli, shall be carried over to his position as Police Director. Upon his separation from employment as Director, Behre shall be entitled to be paid for any unused accumulated time in the following manner: (1) he will be paid for one sick day for every three accrued sick days; and (2) he will be paid for up to and including 50 vacation days. He will not be entitled to compensation for any accrued month days or compensatory time. Behre's duties and obligations as Police Director are set forth in

Chapter 75 of Bloomfield's Municipal Code, and Behre shall act at all times in his role as Police Director in accordance with that Chapter as it may be amended. In addition, Behre shall return to Bloomfield any and all equipment, including vehicles, files, weapons, and badges, issued to him by Bloomfield in connection with his service as a law enforcement officer during his leave of absence, except that he shall be entitled to the use of a Department vehicle during his term as Police Director. Bloomfield will make all required pension contributions to the Police & Firemen's Retirement System based on the Police Director's salary pursuant to N.J.S.A. 43:16A-3.1. The appointment shall be for an irrevocable term of one (1) year until August 21, 2015; thereafter, Bloomfield may, in its sole discretion, decide to renew or not renew his appointment to Police Director on a year to year basis. Behre acknowledges that his appointment as Police Director does not create any right or expectation to employment as Police Director for more than the term set forth in this Agreement and is not subject to N.J.S.A. 40A:14-147.

7. **Full and Complete Settlement.** The Parties agree that the Payment, the appointment to Police Director and other consideration described in this Agreement will be received by Behre in full and complete settlement, as more fully described in Paragraph 8 below, of all known or unknown claims, asserted or unasserted, by Behre allegedly arising out of any and all conduct or actions of Bloomfield and/or allegedly arising out of Behre's employment or relationship with Bloomfield from the beginning of time up to and including the effective date of this Agreement.

8. **General Release and Waiver.** In consideration for the Payment and promises described in Paragraphs 4 and 6 and elsewhere in this Agreement, the Parties fully release and forever discharge the other of and from any and all claims, actions, causes of action,

back pay, front pay, contracts, agreements, compensation, pay, promises, charges, judgments, grievances, obligations, rights, demands, debts, sums of money, salaries, wages, benefits, physical injury, pain, suffering, emotional distress, compensatory damages, or accountings of whatever nature, whether known or unknown, disclosed or undisclosed, asserted or unasserted, in law or equity, contract or tort or otherwise [herein collectively designated "Claim" or "Claims"] through the effective date of this Agreement, including, but not limited to, any and all Claims of retaliation, and any and all tort Claims or contract Claims or Claims for general damages, and any and all Claims arising under, made, regarding, or invoking: any federal, state or local laws or under the common law, violations of any federal, state or local fair employment practices or civil rights laws or ordinances, Claims for personal injury, defamation, wrongful conduct, or wrongful discharge, the Civil Rights Acts of 1866 and 1871, as amended; 42 U.S.C. §§1981 -1988; the Civil Rights Act of 1964, as amended, including Title VII, the Americans with Disabilities Act ("ADA"); the Age Discrimination in Employment Act ("ADEA"), as amended; the Older Workers Benefit Protection Act ("OWBPA"); the Employee Retirement Income Security Act ("ERISA") (except for any claim for vested pension or savings plan benefits); the Fair Labor Standards Act ("FLSA"); the Rehabilitation Act of 1973; Executive Order 11246; the Family and Medical Leave Act ("FMLA"); the National Labor Relations Act, as amended; the Immigration Reform and Control Act, as amended the Worker Adjustment and Retraining Notification Act ("WARN"); the Occupational Safety and Health Act, as amended; the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); the Rehabilitation Act; the Uniformed Services Employment and Reemployment Rights Act of 1994; the Sarbanes-Oxley Act of 2002; the Fair Credit Reporting Act; the Equal Pay Act; the False Claims Act, 31 U.S.C. §3729; the Employee Polygraph Protection Act; the New Jersey Law Against Discrimination ("LAD"); the

Conscientious Employee Protection Act (“CEPA”); the New Jersey Family Leave Act (“NJFLA”); New Jersey Wage Payment Law (“NJWPL”); New Jersey Wage and Hour Law (“NJWHL”); the New Jersey Temporary Disability Benefits Law (“NJTDB”); the New Jersey Civil Rights Act (“NJCRA”); the New Jersey Computer Related Offenses Act (“CROA”), and the United States and New Jersey Constitutions; collective bargaining agreements, contracts, benefits or understandings; any Claims arising out of any relationship, including employment relationship, between Behre and the Bloomfield predating the effective date of this Agreement; any and all grievances, or demands for mediation or arbitration; or Claims or demands under Bloomfield’s policies and procedures; and any and all Claims asserted, or which could have been asserted, in the NOTC referenced above, including any Claims against any current or former agents or employees of Bloomfield.

Behre hereby specifically waives, releases, and gives up all Claims and rights, as described in the preceding Paragraph, whether now known or unknown, which he has or may have, against Bloomfield based on any fact, act, event or omission, whether now known or unknown, occurring before the effective date of this Agreement. Behre understands that he is waiving, releasing and giving up all Claims and rights about which he knows and all Claims and rights about which he may not know. This release does not apply to Claims based on facts occurring after the effective date of this Agreement nor does it affect Behre’s right to sue to enforce any term of this Agreement or for a breach of any term of this Agreement.

9. Applicable Law and Severability. This Agreement shall be governed by and construed in accordance with the laws of New Jersey, except where federal law controls. Should any provision of this Agreement be declared or determined by any Court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby,

and said illegal or invalid part, term or provision shall deemed not to be a part of this Agreement.

10. Behre's Certification. Behre agrees, certifies, acknowledges, and represents: (a) that he has been and is hereby advised in writing to consult with an attorney of his choice and at his expense, prior to signing this Agreement; (b) that he has had adequate time and opportunity to review and discuss, and has reviewed and discussed, all of the terms and sections of this Agreement thoroughly with his attorney; (c) that his attorney has explained this entire Agreement to him; (d) that he does not waive any rights or claims that may arise after the date this Agreement becomes effective; (e) that he shall have and was given at least twenty-one (21) to consider the terms and conditions of this Agreement before signing it; (f) that his waiver of Claims and this Agreement shall not become effective until the effective date of this Agreement; and (g) that, in accordance with the Older Workers Benefit Protection Act, he understands that he will have an additional seven (7) day period following the date of the signing of this Agreement by all Parties to revoke or cancel this Agreement. To be effective, any such revocation must be in writing and delivered to Bloomfield's attorney, Brian Aloia, Esq., by hand or by mail within the seven-day period. If sent by mail, the revocation must be (1) postmarked within the seven (7) day period; (2) properly addressed; and (3) sent by certified mail, return receipt requested. Behre understands that, if he revokes this Agreement, Bloomfield will not be required to make any payments hereunder to Behre, and he will not be entitled to appointment to the position of Police Director.

If Behre decides to sign this Agreement before the expiration of the 21-day period, Behre specifically acknowledges that he has had sufficient time and opportunity to

review and understand the terms of this Agreement and specifically waives and gives up any rights for additional time or opportunity to review it.

11. Contingency. The Parties acknowledge that the effectiveness of this Agreement is contingent on and subject to its approval and passage of the necessary ordinances, resolutions establishing the Director position and the salary for same, and the acceptance of this Agreement by the governing body of the Township of Bloomfield and that, if those conditions are not satisfied, then this Agreement shall be null and void, as if this Agreement had never existed. If the Payment in the amount of \$15,000 described above has been made, Behre hereby agrees that he will return the Payment immediately.

12. Breach of Agreement/Attorneys' Fees. In the event that either party brings an action to enforce the terms of this Agreement or as a result of a breach of the Agreement by the opposite party, in addition to any remedies available at law or in equity, the non-breaching party shall be entitled to an award of reasonable attorneys' fees and costs incurred in connection with that enforcement or breach action in the event that any such breach is found by a court of competent jurisdiction.

13. Full Knowledge. Behre further warrants, represents, and agrees that, in signing this Agreement, he does so with full knowledge of any and all rights which he may have with respect to Bloomfield or the NOTC.

14. Headings. The headings of the Paragraphs in this Agreement are for convenience only and shall not control or affect the meaning or construction of, or limit the scope or intent of, any of the provisions of this Agreement:

15. **Effective Date.** The effective date of this Agreement shall be the next day following the end of the seven (7) day revocation period, unless this Agreement is revoked properly within such revocation period.

BEHRE FURTHER CERTIFIES, ACKNOWLEDGES, AND REPRESENTS THAT HE IS ABLE TO READ AND UNDERSTAND ENGLISH, THAT HE UNDERSTANDS ALL OF THE PROVISIONS HEREIN, WITH THE ADVICE AND ASSISTANCE OF HIS ATTORNEY, AND THAT HE MAKES THIS AGREEMENT KNOWINGLY AND VOLUNTARILY. HE ACKNOWLEDGES THAT HE HAS NO PHYSICAL OR MENTAL PROBLEM, CONDITION, OR IMPAIRMENT OF ANY KIND WHICH HAS INTERFERED WITH HIS ABILITY TO READ AND UNDERSTAND THE MEANING OF THIS AGREEMENT OR ITS TERMS. BEHRE FURTHER REPRESENTS THAT, IN SIGNING THIS AGREEMENT, HE DOES NOT RELY ON ANY PROMISES OR REPRESENTATIONS MADE BY ANYONE OTHER THAN THOSE STATED SPECIFICALLY HEREIN.

Witness: *Laurie Polyzos*

Witness: *Andree Schneider*

JAMES BEHRE

James Behre

Dated: 8-11-2014

TOWNSHIP OF BLOOMFIELD

Mel Uza

By:

Dated: