

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is entered into this 13 day of October, 2016 by and between the **City of Punta Gorda, Florida**, a Florida municipal corporation with its principal place of business located at 326 West Marion Avenue, Punta Gorda, Florida 33950, (the "City") and **Richard Schumacher**, an individual with a principal address of 1416 Coral Ridge Dr. Punta Gorda FL 33950 ("Schumacher") (collectively referred to as the "Parties").

WHEREAS, on October 30, 2015, Schumacher was injured while being arrested by a k-9 officer employed by the Punta Gorda Police Department for the charges brought in Punta Gorda Police Department Case No. 15-03403; *State v. Schumacher*, Case No. 15-002048CF (Fla. 20<sup>th</sup> Cir. Ct. 2015) (the "Incident"); and

WHEREAS, by and through his legal counsel, Schumacher subsequently sent the City a notice of claim pursuant to section 768.28, Florida Statutes, for monetary damages based upon federal constitutional violations and state law torts, including but not limited to negligent, intentional, and malicious use of force (the "Claim"); and

WHEREAS, while both Parties deny any wrongdoing, the Parties agree to voluntarily enter into this Agreement to settle any and all claims and disputes between them, whether known or unknown, including those raised in the Claim, and any and all claims arising out of or related to the Incident, so as to avoid the time and expense involved in litigation.

NOW, THEREFORE, in consideration of the covenants contained herein, the City's payment of the sum of money described herein to Schumacher, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals:** The foregoing recitals are true and correct and are hereby incorporated by reference.
2. **Terms of Settlement:** In consideration for the promises as contained in this Agreement, the City shall pay Schumacher the sum of Seventy Thousand and NO/100 U.S. Dollars (\$70,000.00). A check in the amount of the settlement sum will be written payable to the order of "Brown, Suarez, Rios & Weinberg P.A. f/b/o Richard Schumacher" and shall be transmitted to Brown, Suarez, Rios & Weinberg P.A. within seven (7) days of the City's receipt of the original of this Agreement, fully executed by the Parties.
3. **No Admission of Liability:** Nothing contained in this Agreement shall be construed to be an admission of liability or culpability by any party with respect to any claim being compromised herein. The City denies violating any laws or breaching any duties, including but not limited to the constitutional, statutory, and common-law claims raised

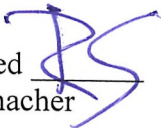
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in the Claim. The City and its officers maintain that they did not violate anyone's civil rights nor did they act wrongfully or negligently, during the Incident. They deny any liability to Schumacher, and to any other person or entity, on any basis whatsoever. The Parties are entering into this Agreement in an effort to avoid the costs of litigation. This Agreement may not be introduced into evidence in any proceeding by any party except to enforce the terms and conditions contained in this Agreement.

4. **Release of Claims:** Schumacher, individually and on behalf of his administrators, executors, successors and assigns, hereby irrevocably and unconditionally releases, acquits, remises, and forever discharges the City and its mayor, council members, officers, Police Chief and police officers in their individual and official capacities, officials, employees, former employees, agents, attorneys, successors, assigns, and insurers from any and all rights, obligations, liens, claims, damages, demands, relief, liabilities, equities, actions and causes of action of whatever kind and character, in law or in equity, in contract, tort or other branch of common law, or for violations of any civil rights or federal or state constitutional or statutory rights or local ordinances, including but not limited to 42 U.S.C. section 1983, whether known or unknown, suspected or unsuspected, disclosed or undisclosed, actual and consequential, specific and general, however denominated, including but not limited to damages for personal injury, bodily injury, emotional injury, pain and suffering, medical expenses, compensatory damages, punitive damages, lost wages, money, remuneration, attorney's fees, costs, interest, expenses, or anything of value whatsoever, against the City arising from the beginning of time to the date of this Agreement, including but not limited to those claims stated in the Claim, and any claims that could have been brought against the City by Schumacher in any state or federal lawsuit or any administrative proceeding arising out of the Incident. This release includes all claims for injuries, illnesses, and complications now known or that may later be discovered, including all effects and consequences thereof arising out of or in any way connected to the Incident. **The listing of, or the failure to list, specific types of claims as set forth above is not intended to limit in any way the general and comprehensive scope of this Release.**
5. **Release from Liens.** To the extent required by law, Schumacher individually, and on behalf of his administrators, executors, successors and assigns, shall fully pay and satisfy any and all outstanding liens of any type on the proceeds of this settlement, including but not limited to any claims of the Department of Corrections and/or its insurer, and to repay to the City, and/or its mayor, council members, officers, Police Chief, police officers, officials, employees, former employees, agents, attorneys, successors, assigns, and insurers any additional sum of money that any of them may hereafter be compelled to pay on account of Schumacher's failure to fully pay and satisfy said liens including the attorneys' fees and costs which may result from any claim by any possible lien holder because of the failure of Schumacher to fully satisfy said liens. Schumacher further agrees that, if required by law, the Department of Corrections, all first party insurance carriers or worker's compensation carriers which have paid medical benefits

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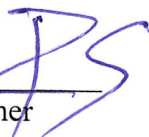




for medical treatment and/or lost wages will be reimbursed from the proceeds of this recovery to the extent that the Department of Corrections or any first party carrier is entitled to reimbursement from Schumacher. Further, Schumacher agrees to indemnify the City for any amount paid by the City, to the Department of Corrections or any first party insurance carriers due to Schumacher's failure to reimburse the Department of Corrections or said first party insurance carrier from the proceeds of this recovery including attorneys' fees and costs which may result from any claim by the Department of Corrections or any first party insurance carrier because of Schumacher's failure to reimburse the carrier.

6. Medicare and Medicaid Claims. Schumacher acknowledges that he conducted an investigation into and has advised the City that Medicare and/or Medicaid has not paid for any medical expenses incurred to date and that he has considered Medicare's and/or Medicaid's interests in this settlement and it has been determined that an allocation for future Medicare and/or Medicaid covered expenses is not required pursuant to the policies and procedures established to protect Medicare's and/or Medicaid's interests as required under the Medicare and/or Medicaid secondary payer laws. Schumacher represents that he has no reasonable expectation of Medicare and/or Medicaid eligibility within the next thirty (30) months. Schumacher agrees to defend, hold harmless and indemnify the CITY from any Medicare and/or Medicaid liens, set aside requirements and/or fines, penalties, sanctions, and/or litigation instituted by Medicare and/or Medicaid or its agents due to any potential failure on the part of Schumacher to report to Medicare and/or Medicaid and/or secure a Medicare and/or Medicaid set-aside, as well as defend and indemnify the CITY from any and all claims of Medicare and/or Medicaid.
7. Entire Agreement: This Agreement constitutes the entire agreement between the Parties, supersedes all prior and contemporaneous understandings and representations whether oral or written, and cannot be altered or modified unless the same occurs by way of a writing signed by the Parties. This Agreement may be signed in counterparts with the same force and effect as if all signatures were set forth in a single instrument. This Agreement shall be governed and construed under the laws of the State of Florida.
8. Consultation with Attorneys: The Parties agree that they have consulted with their respective attorneys concerning the contents of this Agreement, or have waived the opportunity to do so. By signing this Agreement, Schumacher affirms that he has read it, understands it, knows that he is giving up important rights, agrees with everything in it, and has knowingly and voluntarily signed it. Schumacher also understands that this Agreement cannot be revoked, and once signed, is binding on both Schumacher and the City. The Parties agree that they shall not seek to recover from each other the costs and attorney's fees incurred in the preparation of this Agreement, in pursuit of the Claim, or in the negotiation of this Agreement.

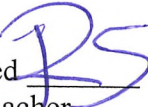
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9. **Authority:** Schumacher represents that he has not previously assigned or transferred, or purported to assign or transfer, to any person or entity, all or part of any claim against the City. This Agreement shall be binding upon Schumacher and his heirs, administrators, executors, successors and assigns. Schumacher further states that at the time of reviewing and signing this Agreement, he is of a sound mind and is not under the influence of any drugs, alcohol, or other substances which may affect his ability to fully and completely understand and voluntarily enter into this Agreement.
10. **Action for Breach of Agreement:** The Parties agree that, in any suit or action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees from the non-prevailing party.
11. **Headings:** The headings of the paragraphs of this Agreement are for convenience only, and shall not act to limit or otherwise affect the rights and obligations set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement OF THEIR OWN FREE CHOICE AND WILL, AFTER CONSULTATION WITH COUNSEL OF THEIR CHOICE, on the date(s) set forth below.

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Signature Blocks on Following Page(s)]

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RICHARD SCHUMACHER

Richard Schumacher

Date: 10/13/16

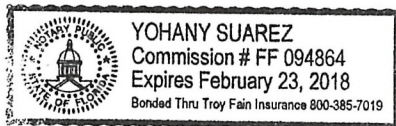
Christopher Brown, Esq.

Counsel for Claimant, Richard Schumacher

STATE OF FLORIDA

COUNTY OF Charlotte

The foregoing Settlement Agreement and Release was acknowledged before me on this 13 day of October, 2016, by Richard Schumacher, who is personally known to me or has produced personally known as identification.



Notary Public, State of Florida

Print Name: Yohany Suarez

My Commission Expires: 2/23/18

THE CITY OF PUNTA GORDA, FLORIDA

By: \_\_\_\_\_

Howard Kunik

City Manager

Date: \_\_\_\_\_

Nicole C. Nate

Nicole C. Nate, B.C.S.

Counsel for City of Punta Gorda

STATE OF FLORIDA

COUNTY OF CHARLOTTE

The foregoing Settlement Agreement and Release was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Howard Kunik, as City Manager for the City of Punta Gorda, Florida, for and on behalf of the municipal corporation, who is personally known to me or has produced \_\_\_\_\_ as identification.

Notary Public, State of Florida

Print Name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

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Schumacher