

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is entered into as of January 13, 2020 by and between Illinois Union Insurance Company ("Illinois Union") on the one hand, and the City of Riviera Beach (the "City" or the "Insured") on the other hand. Illinois Union and the Insured are collectively referred to herein as the "Parties."

A. Illinois Union issued Public Officials Professional Liability Policy No. G21646726 004 to the City for the policy period from December 18, 2007 to December 18, 2008 ("Policy"). The Policy contains a limit of liability for Damages of \$1,000,000 per Claim and a limit of liability for Claim Expenses of \$1,000,000 per Claim. The above limits of liability are excess of a \$100,000 self-insured retention for each Claim.

B. The Insured has sought insurance coverage under the Policy and submitted to Illinois Union the following matter:

- *Fane Lozman v. City of Riviera Beach*, Case No. 08-80134-CIV-Middlebrooks, in the United States District Court for the Southern District of Florida.

The above matter is referred to as the "Underlying Matter."

C. The Parties have reserved their rights regarding the existence and extent of coverage for the Underlying Matter.

D. The City and Lozman participated in a mediation in the Underlying Matter on January 13, 2020 before U.S. Magistrate-Judge William Matthewman.

E. The City and Lozman have agreed to settle the Underlying Matter subject to the approval of the City Council of the City.

F. The Parties desire to resolve and settle fully and finally all claims between them that were or could have been asserted arising out of the Policy related to or involving the Underlying Matter.

Terms of the Agreement

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree, as follows:

1. The above recitals are hereby incorporated into this Agreement.

2. The entirety of this Agreement is contingent on the approval of the City Council of the City of both this Agreement and the Settlement Agreement in the Underlying Matter dated January 13, 2020. If the City Council does not approve both of the above-mentioned agreements, then this Agreement shall be null and void and the Parties shall be returned to their respective positions as of January 12, 2020.

3. a. Contingent upon approval by the City Council of this Settlement Agreement and the Settlement Agreement in the Underlying Matter, the insurer for the City shall pay the total sum of Eight Hundred Seventy Five Thousand Dollars and Zero Cents (\$875,000.00) ("Settlement Amount") to be distributed by settlement checks as follows: One Dollar and Zero Cents (\$1.00) to Fane Lozman as nominal damages; Twenty Five Thousand Six Hundred Thirty Dollars and Zero Cents (\$25,630.00) as costs to be reimbursed to Fane Lozman; Five Hundred Thousand Dollars and Zero Cents (\$500,000.00) to the Stanford Supreme Court Litigation Clinic; Sixty Two Thousand One Hundred Fifty Dollars and Zero Cents (\$62,150.00) to the law firm of Pierce, Bainbridge, Beck, & Hecht, LLP; Seventy Thousand Two Hundred and Thirty Eight Dollars and Zero Cents (\$70,238.00) to the law firm of Philip Nathanson, P.A.; One Hundred Five Thousand One Hundred Eighty One Dollars and Zero Cents (\$105,181.00) to the law firm of Cobb Cole, P.A.; Seventy Six Thousand Eight Hundred Dollars and Zero Cents (\$76,800.00) to the law firm of Greenberg Traurig, LLP; and Thirty Five Thousand Dollars and Zero Cents (\$35,000.00) to Fane Lozman for attorney's fees and costs paid to Ray Taseff, P.A. within 45 days of Illinois Union's receipt of a fully

executed copy of this Settlement Agreement and Release; and, with respect to each payee: a W-9 with tax identification number; and payment instructions for physical delivery of a check, specifying the identity of the payee, address, contact person, and phone number.

b. Subject to the \$1,000,000 limit of liability for Claim Expenses, Illinois Union will also pay the reasonable and necessary defense fees and expenses at Illinois Union's Panel Rates incurred by Roberts, Reynolds, Bedard & Tuzzio, PLLC in connection with the defense and ultimate resolution of the Underlying Matter.

4. The Insured on its own behalf, and on behalf of each of its respective past, present, and future elected or appointed Members of the City Council, officials, commissions, boards, units of the City, volunteers, affiliates, directors, officers, employees, agents, representatives, administrators, successors, successors-in-interest, attorneys, solicitors, and assigns, and any persons or entities acting by, through, under, or in concert with them or any of them ("Insured Parties") hereby remise, release, forever discharge and covenant not to sue Illinois Union and each of its past, present, and future parents, subsidiaries, shareholders, affiliates, reinsurers, directors, officers, employees, agents, representatives, attorneys, solicitors, successors, successors-in-interest, and assigns (the "Insurer Parties") of and from any and all claims, liabilities, damages, attorneys' fees, costs, causes of action, and demands, known or unknown, contractual or extra-contractual, of any kind or character whatsoever, including without limitation, any claim for compensatory, punitive, extra-contractual, or other damages or relief, and any claim alleging "bad faith," breach of the duty of good faith and fair dealing, unfair claims handling, unfair trade practices, unfair insurance practices, breach of fiduciary duty, any duty to investigate, indemnify or settle, or any other alleged wrongdoing or breach of duty that the Insured Parties now have, or claim to have, or have had, arising from, relating to, or in any way involving (i) the

Underlying Matter; and/or (ii) any of the allegations alleged or that could have been alleged in the Underlying Matter.

5. The Parties acknowledge that they may have sustained damages, losses, fees, costs or expenses that are presently unknown and unsuspected, and that such damages, losses fees, costs or expenses as the Parties may have sustained might give rise to additional damages, losses, fees, costs or expenses in the future. Nevertheless, each of the Parties acknowledges that this Agreement has been negotiated and agreed upon in light of such possible damages, losses, fees, costs or expenses, and with respect to all rights relating to the Policy, and/or the Underlying Matter, and each expressly waives any and all rights under any federal, state, or territorial statute or law in respect of claims that each of the Parties does not know or suspect to exist in its favor at the time of executing the release, which, if known by it, must have materially affected its settlement.

6. The Insured covenants and agrees that the payment by Illinois Union represents full and final satisfaction by Illinois Union of any and all claims relating to or in any way involving the Underlying Matter or any Interrelated Wrongful Acts, as defined in the Policy.

7. The Parties intend the payment and release provided for herein to be a contemporaneous exchange.

8. The payment and release of claims by and among the Parties, as set forth herein, have been agreed to by way of a compromise of the disputed claims among the Parties. It is expressly agreed that this Agreement, and the settlement provided for herein, whether or not consummated, shall have no precedential value with respect to any other claim or policy issued by Illinois Union or one of its affiliated companies and shall in no event be construed or be deemed to be evidence of an admission or a concession by any of the Parties with respect to any claim or allegation, or any fault, or any liability whatsoever. This Agreement and each of its

provisions, any prior drafts thereof, and any negotiations relating to it, shall not be offered or received in evidence in any action or proceeding, except that only this Agreement may be offered or received in evidence in a proceeding to enforce the terms of this Agreement.

9. The Parties declare and represent that no promise or inducement or other agreement not expressly contained herein has been made to any of them and that they have relied upon the advice of their own attorneys in entering into this Agreement.

10. Each of the Parties represents and warrants that it has not assigned or transferred or purported to assign or transfer to any person or entity all or any part of any interest in any claim, contention, demand, cause of action (at law or in equity), debt, lien, agreement, note, obligation, or liability of any nature, character, or description whatsoever that is or that purports to be released or discharged by this Agreement.

11. Each of the Parties acknowledges that it has had adequate opportunity to make whatever investigation or inquiry it may deem necessary or desirable in connection with the subject matter of this Agreement prior to the execution hereof and the delivery and acceptance of the consideration specified herein. Each Party to this Agreement understands, acknowledges and agrees that if any fact now believed to be true is found to be other than, or different from, that which is now believed, each Party expressly assumes the risk of such difference in fact and agrees that this Agreement shall remain effective notwithstanding any such difference in fact.

12. The Parties to this Agreement hereby specifically state that they have executed this Agreement voluntarily after consultation with legal counsel of their own choosing as to the provisions and ramifications thereof.

13. The Parties acknowledge that each of them has had an equal opportunity to participate in the drafting of this Agreement. Therefore, in any construction of this Agreement, the Parties agree and understand that this Agreement shall not be construed against any Party on

the basis of authorship. This Agreement shall not be interpreted according to any rules governing interpretation of insurance policies.

14. This Agreement constitutes the complete expression of the terms of the settlement among the Parties. Other than the Policy, all other prior and contemporaneous agreements, representations and negotiations are superseded by this Agreement. The terms of this Agreement are contractual and not merely a recital.

15. No waiver, modification, or amendment of any term, condition, or provision of this Agreement shall be valid or have any force or effect unless made in writing and signed by each of the Parties.

16. This Agreement shall be binding on any successors or assigns of the Parties.

17. Each person signing this Agreement in a representative capacity represents and warrants that he or she has full and lawful authority from the Party or Parties he or she represents, to make, execute, and deliver this document on behalf of such Party.

18. This Agreement may be signed in counterparts and shall be effective upon execution by all of the Parties subject to the conditions stated herein. Facsimile, PDF and tif images of signatures shall be valid and effective as original signatures.

CITY OF RIVIERA BEACH, FLORIDA

By: _____

Title: _____

ILLINOIS UNION INSURANCE COMPANY

By: _____

Title: _____

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