

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

This SETTLEMENT AGREEMENT AND GENERAL RELEASE (the “Agreement”) is made and executed as of this 19th day of March, 2019, by and between Plaintiff, Press & Journal, Inc. (“P&J”) and the Defendant, Borough of Middletown (“Borough”), in a Lawsuit referenced herein, and is intended to extinguish all liabilities, causes of action, or damages, whether past or present, known or unknown, if any, to which the P&J or the Borough may be entitled. P&J and the Borough are hereinafter collectively referred to as the “Parties.”

### **I. RECITALS**

- A. On October 23, 2018, the P&J filed suit against the Borough in the United States District Court for the Middle District of Pennsylvania, docketed at 18-cv-02064-CCC (“the Lawsuit”).
- B. In the Lawsuit, the P&J alleged, *inter alia*, that by letter from certain members of Borough Council and the Mayor of the Borough dated July 17, 2018, the Borough confirmed that it was terminating its commercial relationship with the P&J and ceasing further advertising in the P&J, and that the Borough’s act of terminating its commercial relationship with the P&J was motivated by its opposition to the content and viewpoints-actual or perceived-contained in the P&J in violation of the P&J’s First Amendment rights to freedom of speech and press. The P&J has sought a preliminary injunction against the Borough.
- C. The Borough has denied the P&J’s allegations, and has opposed the issuance of the preliminary injunction sought by the P&J.
- D. In order to avoid further litigation costs and to move forward for the betterment of the community, the Parties desire to resolve the Lawsuit and avoid further litigation.

NOW, THEREFORE, in consideration of the above recitals and the value set out below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties covenant and agree as follows.

## **II. AGREEMENT BETWEEN THE PRESS & JOURNAL AND THE BOROUGH**

### **1. RECITALS**

The recitals set forth above form an integral and substantive part of this Agreement and are incorporated herein.

### **2. STATEMENTS FROM THE PARTIES**

As part of the resolution of this action, each of the Parties desires to make a statement expressing its position relating to this Lawsuit.

The P&J states: P&J continues to assert that its First Amendment rights were violated by actions of the Borough in order to influence the P&J's content and viewpoints by discontinuing placement of advertisements and public notices as stated in the Borough's July 17, 2018 policy letter. P&J is agreeing to the settlement of this case to allow both P&J and the Borough to focus on the future and the good of Middletown as a whole. P&J hopes that settlement of this litigation will restore a proper relationship between the Borough's government and P&J as a private entity. P&J is dedicated to providing information to the public through careful reporting of the news and providing frank and honest assessments of current events through its editorials. Further, P&J will continue to defend the right of the free press from any improper outside influence.

The Borough states: As it has throughout the Lawsuit, the Borough denies that it violated the P&J's constitutional rights. The Borough has not excluded the P&J from being used for notices and advertisements based on the content or viewpoints of its publication. In fact, the Borough implemented measures to ensure that its purchase of advertising space is based on content-neutral criteria. Although the Borough disputes the allegations made by the P&J, the Borough is agreeing to settle the Lawsuit in order to move forward in a positive direction and concentrate its efforts on the betterment of the community.

### **3. CONSIDERATION FOR DISMISSAL**

The P&J has not sought financial damages in the Lawsuit, and the Borough is not paying financial damages as part of this settlement. The Parties agree that the following shall serve as good, valuable, and sufficient consideration for the promises made in this Agreement:

a. The Borough shall pass a resolution, and keep current by way of future resolution, its criteria by which decisions will be made for the placement of advertising required by law and advertising not so required, which resolution shall include that the Borough shall make decisions on the placement of advertising on bases that are content-neutral and viewpoint-neutral consistent with the First Amendment of the United States Constitution.

b. The Borough shall pay a portion of the attorneys' fees and expenses incurred by the P&J in bringing the Lawsuit. Specifically, the Borough shall pay to the firm of Mette, Evans & Woodside the total amount of \$22,000. The Borough shall not be responsible to pay any other attorneys' fees or expenses that may have been incurred by the P&J relating to the Lawsuit.

c. The Parties shall jointly seek the Court to issue a mutually agreeable consent decree in the Lawsuit, in the form attached to this Agreement.

d. P&J shall cause the Lawsuit to be dismissed with prejudice as to the Borough, subject to the Court retaining jurisdiction to enforce the terms of the consent decree set forth in paragraph 3(c), above.

### **4. RELEASE AND DISCHARGE**

a. The P&J and its owners, agents, employees, and affiliates ("Releasing P&J Parties") hereby release, discharge, and agree to hold the Borough and its current and former councilors, mayors, officials, employees, agents, attorneys, representatives and assigns (collectively, "Released Borough Parties"), free and harmless from and against any and all rights, claims, debts, demands, acts, agreements, liabilities, obligations, damages, costs, fees (including, without limitation, those of attorneys), expenses, actions and/or causes of action of every nature, character and description, whether known or unknown, suspected or unsuspected which are, or could have been, alleged in the Lawsuit.

The Releasing P&J Parties acknowledge and agree that the Release and Discharge set forth above is a GENERAL RELEASE and shall be fully binding and a complete settlement by them of the Released Borough Parties and any and all other persons, firms, or corporations who are or may be liable for claims that are or could have been asserted in the Lawsuit. The Releasing P&J Parties expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Release. The Releasing P&J Parties acknowledge and agree that no statement of fact or opinion has been made by the Released Borough Parties, or anyone acting on behalf of the Released Borough Parties, to induce execution of this Release, and that this Release is executed of its own free act.

b. The Borough and its current and former councilors, mayors, officials, employees, agents, attorneys, representatives and assigns (collectively, “Releasing Borough Parties”), hereby release, discharge, and agree to hold the P&J and its owners, agents, employees, and affiliates (“Released P&J Parties”) free and harmless from and against any and all rights, claims, debts, demands, acts, agreements, liabilities, obligations, damages, costs, fees (including, without limitation, those of attorneys), expenses, actions and/or causes of action of every nature, character and description, whether known or unknown, suspected or unsuspected which are, or could have been, alleged in the Lawsuit.

The Releasing Borough Parties acknowledge and agree that the Release and Discharge set forth above is a GENERAL RELEASE and shall be fully binding and a complete settlement by them of the Released P&J Parties and any and all other persons, firms, or corporations who are or may be liable for claims that are or could have been asserted in the Lawsuit. The Releasing Borough Parties expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Release. The Releasing Borough Parties acknowledge and agree that no statement of fact or opinion has been made by the Released P&J Parties, or anyone acting on behalf of the Released P&J Parties, to induce execution of this Release, and that this Release is executed of his own free act.

## **5. NO ADMISSION OF LIABILITY**

This Agreement is made for the express purpose of avoiding the expense of litigation and to resolve the dispute between the Parties and is not, nor shall it be construed as, an admission of liability or wrongdoing on the part of the Parties.

## **6. LEGAL COUNSEL**

The parties acknowledge that they (i) have read this Agreement in its entirety and fully understand its tenor and effect, (ii) have discussed this Agreement with counsel and/or are aware of their right to do so, (iii) agree that this Agreement constitutes the entire agreement between the Parties, and (iv) by their signature, represent that there have been no other promises or inducements made in connection with the execution of this Agreement other than the consideration set forth above.

## **7. COSTS OF LITIGATION**

Unless otherwise set forth herein, each of the Parties shall pay their own respective costs and attorneys' fees incurred with respect to the Lawsuit and this Agreement.

## **8. FURTHER ASSURANCES**

The Parties hereto agree promptly to execute any further and additional documents and to take all further steps necessary to effectuate the terms and intent of this Agreement.

## **9. NUMBER, GENDER, AND CAPTIONS**

As used herein, the singular shall include the plural and the plural may refer to the singular. The use of either gender shall be applicable to both genders. The titles of any Sections and the Captions herein appear as a matter of convenience only and shall not affect the construction of the terms of this Agreement.

## **10. ENTIRE SETTLEMENT**

This Agreement constitutes the entire agreement and supersedes any prior written and/or verbal agreements between the Parties with regards to the Lawsuit.

## **11. COUNTERPARTS**

This Agreement may be executed in counterparts and all such counterparts when so executed shall together constitute the final Agreement as if one document had been signed by all of the Parties. This Agreement may be executed by facsimile copy and each signature thereto shall be and constitute an original signature, again as if all Parties had executed a single original document.

## **12. PENNSYLVANIA LAW**

This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

## **13. SEVERABILITY**

Should a court of competent jurisdiction deem any provision of this Agreement illegal, invalid or otherwise unenforceable, in whole or in part, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

## **14. BINDING EFFECT**

This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective parent corporations, subsidiaries, affiliates, directors, officers, agents, employees, stockholders, heirs, executors, administrators, legal representatives, predecessors, successors and assigns.

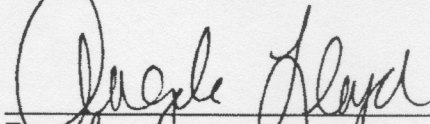
## **15. CONSTRUCTION OF AGREEMENT**

This Agreement shall be given a reasonable interpretation and shall be construed without regard to any presumption or other rule of law requiring construction against the Party who caused it to have been drafted.

WE HAVE READ, UNDERSTAND, AND AGREE TO BE LEGALLY BOUND  
BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT

IN WITNESS WHEREOF, the Parties have hereby executed this SETTLEMENT  
AGREEMENT AND RELEASE.

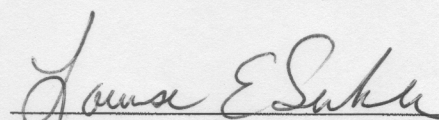
**BOROUGH OF MIDDLETOWN**



By: Angela Lloyd  
Its: Council President

Date: 3/19/19

**PRESS & JOURNAL, INC.**



By: Louise E. Sukle  
Its: President

Date: 3/20/19