

RESOLUTION NO. 1772.06

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, APPROVING THE SETTLEMENT AGREEMENT AND GENERAL RELEASE ("AGREEMENT") BETWEEN THE TOWN AND ROBERT NIEMAN TO SETTLE CERTAIN CLAIMS AND TO AVOID FURTHER ADMINISTRATIVE PROCEEDINGS; AUTHORIZING THE TOWN MAYOR TO EXECUTE THE AGREEMENT; PROVIDING FOR IMPLEMENTATION OF THE AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Robert Nieman is currently employed as a Sergeant for the Town of Golden Beach Police Department; and

WHEREAS, the Town of Golden Beach ("Town") conducted Internal Affairs Cases IA#2005-02 and IA#2005-05 against Mr. Nieman and advised him that he may be subject to disciplinary action; and

WHEREAS, both the Town and Mr. Nieman recognize that the resolution of the above-referenced matters in a manner favorable to their respective interests cannot be reasonably predicted and that further administrative action will require the expenditure of significant funds and resources; and

WHEREAS, the Town desires to enter into a Settlement Agreement and General Release ("Agreement") with Mr. Nieman to settle these and other claims between the Town and Mr. Nieman and to avoid further administrative proceedings; and

WHEREAS, the Town Council finds that approval of the Agreement is in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF GOLDEN BEACH, FLORIDA, AS FOLLOWS:

Resolution No. 1772.06

Section 1. Recitals Adopted. That each of the above-stated recitals is hereby adopted and confirmed.

Section 2. Agreement Approved. That the Agreement, in substantially the form attached hereto, between the Town and Mr. Nieman is hereby approved, and the Mayor is hereby authorized to execute the Agreement, on behalf of the Town.

Section 3. Implementation. That the Mayor and Town Manager are authorized to take any and all action which is necessary to implement this Resolution and the Agreement.

Section 4. Effective Date. That this Resolution shall be effective immediately upon adoption.

Sponsored by Mayor Singer.


The Motion to adopt the foregoing Resolution was offered by Councilmember Iglesias, seconded by Councilmember Lusskin and on roll call the following vote ensued:

Mayor Singer	<u>Aye</u>
Vice Mayor Einstein	<u>Aye</u>
Councilmember Colella-Battista	<u>Aye</u>
Councilmember Iglesias	<u>Aye</u>
Councilmember Lusskin	<u>Aye</u>

PASSED AND ADOPTED by the Town Council of the Town of Golden Beach, Florida,
this 2nd day of March, 2006.

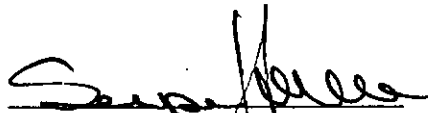
ATTEST:


MAYOR GLENN SINGER


BONILYN WILBANKS-FREE
TOWN MANAGER

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Resolution No. 1772.06


TOWN ATTORNEY

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This SETTLEMENT AGREEMENT AND GENERAL RELEASE ("AGREEMENT") is entered into this 7th day of March, 2006 between the TOWN OF GOLDEN BEACH ("TOWN"), and ROBERT NIEMAN ("NIEMAN"), jointly referred to as the ("PARTIES").

WHEREAS, NIEMAN is currently employed as a Sergeant for the TOWN's Police Department; and

WHEREAS, the TOWN conducted Internal Affairs Cases IA#2005-02 and IA#2005-05 against NIEMAN and advised NIEMAN that he may be subject to disciplinary action; and

WHEREAS, the Mayor has reviewed these Internal Affairs Cases in their entirety and finds they are not sustainable for disciplinary purposes; and

WHEREAS, NIEMAN is represented by the Police Benevolent Association ("PBA") with regard to the above matters; and

WHEREAS, the PARTIES, hereto recognize that the resolution of the above-referenced matters in a manner favorable to their respective interests cannot be reasonably predicted and that further administrative action will require the expenditure of significant funds and resources by all PARTIES; and

WHEREAS, the PARTIES are desirous of settling these and all other claims between them and are also desirous of avoiding further administrative proceedings.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the PARTIES intending to be legally bound do hereby stipulate and agree as follows:

1. That the above statements are true and correct to the best of the PARTIES' belief and knowledge.

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2. That effective upon the execution of this AGREEMENT, NIEMAN's employment status will change from Sergeant to Police Officer, however, NIEMAN will retain the salary, healthcare and pension benefits of a Sergeant. NIEMAN will continue as a member of the Golden Beach Police Department, but will work as an off-site police consultant with duties to be determined by the Chief of Police or his designee. NIEMAN acknowledges that he will work from home and be available to the TOWN between the hours of 9:00am to 5:00pm from Monday through Friday. NIEMAN's days off will be Saturdays, Sundays, and all holidays.

3. That any outside employment must not interfere with the hours that NIEMAN is to make himself available to the TOWN, 9:00am to 5:00pm from Monday through Friday. That NIEMAN must follow all TOWN policies, rules and regulations, procedures, and applicable collective bargaining provisions regulating all outside employment.

4. That NIEMAN shall return to Police Chief Skinner all TOWN issued equipment and property (a list of which is attached to this AGREEMENT).

5. That NIEMAN will, simultaneously with the execution of this AGREEMENT, provide the TOWN with a signed, irrevocable letter of resignation effective March 8, 2007, (a copy of which is attached to this AGREEMENT). NIEMAN understands that he cannot revoke or rescind his resignation and he also agrees not to apply or re-apply for employment with the TOWN (in any capacity). NIEMAN will receive a sergeant's

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retirement badge and identification upon retirement. NIEMAN further agrees not to file a claim for unemployment compensation benefits inasmuch as he has voluntarily resigned from employment with the TOWN.

6. That NIEMAN's assignment as a Police Officer with the TOWN will end on March 7, 2007. From the date of the execution of this AGREEMENT to March 7, 2007, NIEMAN will exhaust sixty percent (60%) of all his accrued sick, annual leave and compensatory time, including that which is earned during the life of this AGREEMENT. Once NIEMAN's leave is exhausted, on March 8, 2007, NIEMAN will resign as provided for in his irrevocable letter of resignation, a copy of which is attached and will be entitled to forty percent (40%) of his remaining leave accruals.

7. That during the period of time that NIEMAN is in this assignment, he will receive all increases in salary, healthcare, pension benefits and leave entitlements that he is entitled to under the collective bargaining agreement as if NIEMAN were a Sergeant with the exception of any shoe or uniform maintenance allowance and/or take home car if such a benefit is successfully negotiated in any successor labor agreement. NIEMAN will receive any and all applicable pension benefits under the terms provided in Chapter 24 of the Code of the TOWN.

8. That while NIEMAN is an employee of the TOWN he is to follow all TOWN policies, rules and regulations, procedures and the collective bargaining agreement. Failure to do so may result in disciplinary action up to and including termination. In the

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event NIEMAN is disciplined and/or discharged by the TOWN for just cause, NIEMAN will be entitled to the protections afforded to bargaining unit members under the grievance/arbitration section of the existing labor contract.

9. The TOWN agrees to respond to all employment inquiries by providing the following information: dates of employment, position(s) held, salary history, and upon NIEMAN's retirement date that NIEMAN retired. NIEMAN's personnel file will be made available for review and copying if requested and as permitted by Florida Law.

10. That NIEMAN, being of lawful age, for and in exchange for the consideration described in paragraphs above, releases the TOWN from any and all claims or demands he has, had, or now has against the TOWN based on any and all aspects of his employment with the TOWN. This release of claims includes, but is not limited to, a release of any rights or claims NIEMAN may have under Title VII of the Civil Rights Act of 1964, the Florida Civil Rights Act of 1992, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act of 1990, the Equal Pay Act, the Americans with Disabilities Act of 1990, and/or any other federal, state, or local laws, ordinances, or regulations. NIEMAN also agrees that this AGREEMENT includes a release of all claims on the state and federal constitutions and all claims based on theories of contract or tort (e.g., negligent or intentional infliction of emotional distress, defamation, assault, battery, false imprisonment, wrongful termination, etc.), whether based on common law or otherwise. The foregoing list is meant to be illustrative rather than exhaustive.

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11. NIEMAN, his attorneys, agents, experts, representatives, and assignees agree that no action will be taken which might embarrass, harass or adversely affect the TOWN or which might in any way work to the detriment, whether directly or indirectly, of the TOWN with respect to this AGREEMENT, the circumstances related thereto or any of the claims or allegations giving rise to this AGREEMENT. The Town or any of its representatives likewise agrees that no action will be taken which might embarrass, harass, or adversely affect NIEMAN or which might in any way work to the detriment of NIEMAN with respect to this AGREEMENT, the circumstances related thereto, or any of the claims or allegations giving rise to this AGREEMENT. In particular, and by way of illustration and not limitation, NIEMAN agrees that he will not, without the prior written permission from the Town Mayor, directly or indirectly contact members of the press or media, current or former officials of the TOWN, the TOWN's related entities, subsidiaries and subdivisions, the Town's directors, officers, agents, department heads, supervisors, employees, attorneys, successors in interest, representatives and agents, or any other entity that has a business relationship with the TOWN in order to disparage the good reputation or business practices of the TOWN or of any of the TOWN's current and former officers, board members, managers or employees, in connection with this AGREEMENT, the circumstances related thereto, or any of the claims or allegations giving rise to this AGREEMENT. Unless otherwise agreed to in writing with the Town Mayor, if NIEMAN, his attorneys, agents, and/or representatives are asked about this AGREEMENT, they agree

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to state only that NIEMAN and the TOWN have mutually resolved any differences to the PARTIES' satisfaction and the Town Attorney should be contacted for further information.

It is understood by the parties that this non-disparagement clause continues beyond NIEMAN's resignation and retirement date and will be effective in perpetuity.

12. NIEMAN understands and agrees that under the Public Records Law the TOWN is required to, and shall upon request by any third party, disclose the terms of this AGREEMENT, and the TOWN shall comply with all federal, state, and local laws requiring disclosure of public records.

13. In the event either NIEMAN or the TOWN breaches any obligation under this AGREEMENT, including, but not limited to, the non-disparagement provision set forth in this AGREEMENT, the prevailing party shall be entitled to recover, in addition to any other remedies available, the amount of ten (\$10,000.00) thousand dollars, as liquidated damages. In the event of a dispute as to an alleged breach of this AGREEMENT, the prevailing party in any such action will be entitled to attorney's fees.

14. It is understood that this AGREEMENT does not constitute an admission by either of the PARTIES or any of the TOWN's former or current officers, agents, officials and/or employees of any violation of TOWN policy, ordinance(s) or of law. This AGREEMENT is being entered into by the PARTIES solely for the purpose of avoiding the expense and inconvenience of litigation and/or administrative proceedings.

15. It is understood and agreed by the PARTIES hereto that this AGREEMENT

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is executed based upon the particular circumstances of this instant case and does not establish precedent for the resolution of other cases.

16. It is understood and agreed to by the PARTIES that this AGREEMENT is not now and will not be in the future admissible against the TOWN in any legal and/or administrative proceedings, except in proceedings to enforce this AGREEMENT.

17. It is understood and agreed that, should any provision of this AGREEMENT or any part thereof, be rendered or declared invalid by any decree of court of competent jurisdiction, all other provisions of the AGREEMENT shall remain in full force and effect.

18. The PARTIES agree that this AGREEMENT constitutes their entire and final understanding and agreement with respect to the subject matter of this AGREEMENT and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements, or representations concerning all matters directly, indirectly, or collaterally related to the subject matter of this AGREEMENT.

19. In the event of a dispute as to the interpretation or application of or an alleged breach of this AGREEMENT, the PARTIES agree that such dispute **SHALL BE HEARD BY A JUDGE, NOT A JURY**, in Miami-Dade County, Florida. The PARTIES further agree that this AGREEMENT shall be governed by the laws of the State of Florida.

20. The PARTIES agree that this AGREEMENT cannot be amended or modified except by a writing executed by all of the PARTIES hereto or their respective attorneys, administrators, trustees, personal representatives, and/or successors.

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21. The PARTIES acknowledge that they have had the opportunity to negotiate, and have, in fact, negotiated regarding the terms of this AGREEMENT.

22. NIEMAN acknowledges that he will be provided a period of twenty-one (21) days, in accordance with the Older Workers' Protection Act, to consider the AGREEMENT and to decide whether to execute this AGREEMENT. NIEMAN further acknowledges that he has, in fact, reviewed and discussed this AGREEMENT with his legal counsel and that he fully understands this AGREEMENT and agrees to be bound by its terms and conditions.

23. NIEMAN shall have seven (7) calendar days after signing this AGREEMENT to revoke it. NIEMAN understands and agrees that revocation shall be effective only upon the receipt of a written revocation notice addressed to James E. Baker, Esquire, Weiss Serota & Helfman, *et al.*, 2665 South Bayshore Drive, Suite 420, Miami, Florida, 33133, within seven (7) days after NIEMAN signs this AGREEMENT. The revocation must state: "I hereby revoke the Settlement Agreement and General Release." The revocation must be mailed and postmarked or personally delivered to Mr. James E. Baker within seven (7) days of execution of this AGREEMENT. NIEMAN also acknowledges that this AGREEMENT can be revoked only in its entirety and that once revoked no provision of this AGREEMENT is enforceable and NIEMAN will not receive any benefits or payments under this AGREEMENT. This AGREEMENT will become effective on the 8th day following NIEMAN's signing of the AGREEMENT, unless a

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revocation is received, as provided herein.

This AGREEMENT shall not become effective or enforceable until the revocation period
expired.

IN WITNESS WHEREOF, the PARTIES have made and executed this
SETTLEMENT AGREEMENT AND GENERAL RELEASE on the respective dates under
each signature:

ROBERT NIEMAN

By: 

Date: 1/18/06

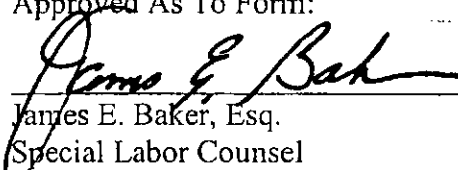
TOWN OF GOLDEN BEACH, FLORIDA

By: 

Glenn Singer, Town Mayor

Date: 3/01/06

Approved As To Form:


James E. Baker, Esq.

Special Labor Counsel

Date: March 7, 2006