

## SEPARATION AGREEMENT AND RELEASE

This *Separation Agreement and Release* ("Agreement") is made and entered into by and between DEBORAH L. NOBLE, her heirs, executors and assigns (collectively referred to as "Noble") and the CITY OF BEACHWOOD, OHIO and each and every one of its present and former employees, elected and appointed officials, directors, representatives and agents (collective referred to as "Beachwood" or "City") (together, the "Parties").

### BACKGROUND:

1. Noble is the Mayor's Executive Secretary and has been employed with Beachwood since October 13, 1997; and

2. The Parties agree that it is necessary to abolish the position of Mayor's Executive Secretary for sound business reasons and that Noble will be laid off from her position as the Mayor's Executive Secretary with the City effective on August 12, 2018;

3. Beachwood and Noble agree that there is no other position of employment with the City that is available or which Noble is qualified to hold.

4. Beachwood and Noble do not know of or anticipate that there will be any disputes between them or legal claims arising out of Noble's employment with or separation from employment with Beachwood, but nevertheless desire to ensure an amicable parting and to settle fully and finally all differences and claims that might otherwise arise out of Noble's employment with Beachwood or the separation of her employment with Beachwood.

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

Section 1. Separation. Noble will be laid off from her employment with Beachwood effective August 12, 2018.

Section 2. Consideration. In consideration of the execution by Noble, and delivery to Beachwood, of this Agreement and the Exhibit attached as Exhibit "A," and the performance of the terms and conditions contained herein the Parties agree to the following:

#### 2.1 Administrative Leave

Noble shall be placed on paid administrative leave effective on February 12, 2018 and continuing through and including the date of August 12, 2018 ("Administrative Leave"). Noble shall continue to receive all benefits which she was entitled during her employment with Beachwood and immediately prior to the commencement of Administrative Leave, with the exception of the cell phone allowance

which will be discontinued effective May 2018. At the time of her separation from employment with Beachwood, Noble will be entitled to COBRA as required by law.

In the event Noble obtains other employment during her Administrative Leave as set forth above, Noble's separation shall automatically be accelerated to the work date immediately prior to the date on which she commences employment with a third party, her Administrative Leave shall end and she shall receive no further compensation.

2.2 Vacation, Personal Leave and Sick Pay

Noble shall be entitled to be paid for her unused vacation, personal leave and sick pay. Payment shall be made to Noble on the first payroll date following the revocation period set forth in Section 6 of this Agreement and provided that Noble does not revoke this Agreement as set forth in Section 6 of this Agreement.

2.3 Annual Adjustment

Noble shall not be eligible to receive either the 2018 annual pay adjustment, if any, or any other benefit that may be enhanced for non-bargaining employees during her Administrative Leave.

2.4 Release

Noble shall execute the document attached hereto as Exhibit "A" but not before the effective date of her separation from the City. If Noble fails to sign Exhibit "A," Noble shall pay Beachwood an amount equal to the wages and benefits she was paid during the Administrative Leave set forth in Section 2.1 of this Agreement.

Section 3. Representations. Noble represents that she has not filed any charges, claims or lawsuits against Beachwood as of the date of this Agreement.

Section 4. Waiver of Right to Reinstatement and Future Employment. Noble forever waives any right she has to reinstatement as an employee of Beachwood. Noble agrees not to apply for employment with Beachwood at any time in the future.

Section 5. Noble's Release of Claims. In consideration of the execution of this Agreement by Beachwood and the performance of the terms and conditions contained herein by Beachwood, Noble and Noble's agents, assigns, heirs, and executors hereby release and forever discharge Beachwood and each and every one of its present, future and former employees, elected and appointed officials, officers, directors, agents, and legal representatives ("Beachwood Releasees"), from any and all claims, demands, liabilities, and

causes of action of every nature, known or unknown, which have existed or exist now and which are in any way connected with, or arise out of, Noble's employment with or separation from Beachwood.

Noble understands that there are various federal, state and local laws that regulate the payment of wages and that prohibit employment discrimination on the basis of, among other things, age, sex, race, color, national origin, religion and disability, and that these laws are enforced by various government agencies. Noble, for herself and her heirs, personal representatives, assigns, successors, attorneys, and agents hereby releases and forever discharges Beachwood Releasees from any and all lawsuits asserting any claim which she now has, or ever had, under the Fair Labor Standards action, Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Family and Medical Leave Act, the Equal Pay Act, and Ohio law, and hereby releases and forever discharges Beachwood Releasees from any liability for any personal right of recovery of any kind that Noble now has, or ever had, including the right to recover unpaid wages, the right of reinstatement, or the right to recover damages in her own lawsuit or in a lawsuit brought on her behalf by the U.S. Department of Labor, Equal Employment Opportunity Commission or other governmental agency, under the Americans with Disabilities Act, the Age Discrimination in Employment Act, Title VII of the Civil Right Act of 1964, the Family and Medical Leave Act, the Equal Pay act, and Ohio law arising out of, or relating to, Noble's employment with or separation from Beachwood.

Noble further acknowledges and agrees that she has been paid by Beachwood for all work performed and that she has been paid all wages, compensation and benefits to which she is entitled as of the date of this Agreement.

The Parties acknowledge that they might hereafter discover facts different from or in addition to those they now know or believe to be true with respect to the released claims and they expressly agree to assume the risk of possible discovery of additional or different facts, and further agree that the Agreement shall be and remain effective in all respects regardless of such additional or different discovered facts.

Noble hereby specifically releases, discharges and waives, but not by way of limitation, any claim, demand, or cause of action based on the theories of wrongful or unjust termination, breach of contract (express or implied), promissory estoppel, negligent or intentional conduct, breach of an implied covenant of good faith and fair dealing, defamation, intentional or negligent inflictions of emotional distress, false light, invasion of privacy and any and all forms of employment discrimination, as well as claims for attorneys' fees, expenses, and costs related to any of the foregoing.

*This waiver and release does not limit Noble's right to file a charge, testify, assist or participate in any manner in any government investigation, hearing or proceeding including, under any employment law including, but not limited to, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act, or any state civil rights Act. Noble understand that she retains the right to communicate with*

*the EEOC and comparable state or local agencies and such communication can be initiated by Noble or in response to the government and is not limited by any non-disparagement obligation under this Agreement. However, if any third party, such as a government agency, allows Noble to file a claim, or brings any claim or conducts an investigation against Beachwood Releasees on Noble's behalf, Noble waives and agrees to relinquish any damages or other individual relief that may be awarded as a result of any such proceedings. Further, Noble agrees that she will not file, commence, institute, maintain, prosecute or voluntarily aid any action at law or equity, or otherwise prosecute or sue any of the parties released by this Agreement, either affirmatively or by way of cross-complaint, defense or counterclaim, or in any other manner with respect to claims released in this Agreement.*

The foregoing to the contrary notwithstanding, Beachwood shall not oppose an application for Unemployment Compensation filed by Noble; provided, however, that Beachwood will respond truthfully to, and will provide any information requested of it by the Ohio Department of Job and Family Services in connection with any such application.

Section 6. Right to Representation, Time Limits and Revocation Period. Noble, in receiving a copy of this Agreement, acknowledges that she has been advised in writing to seek the advice of an attorney of her own choosing before signing the Agreement. Noble may consider this Agreement for at least twenty-one (21) days from the date she receives this Agreement. If Noble elects to sign this Agreement in less than twenty-one (21) days, then she is waiving her right to consider this Agreement for up to twenty-one (21) days. Noble shall also have the right to revoke this Agreement at any time within seven (7) days after the date she has signed it. To revoke the Agreement, she must cause a signed copy of this Agreement, marked "Revoked," to be delivered to Martin S. Horwitz, Mayor of the City of Beachwood, at Beachwood City Hall before the end of the seven (7) day period. The date of signing, as indicated next to her signature, will mark the beginning of the seven (7) day period. This Agreement will become effective on the 8<sup>th</sup> day after Noble signs it, provided that it has not been revoked before that day.

Section 7. Confidentiality. The Parties agree to keep the terms of this Agreement confidential to the fullest extent permitted law. Noble agrees not to disclose the terms of this Agreement to any individual or entity (including but not limited to friends, colleagues, other employees) other than her legal counsel, members of her immediate family, her accountant or as required by law. If requested regarding her employment with or separation of employment from Beachwood, Noble and the City shall respond that her separation was a mutual decision and that neither can comment further.

Section 8. Mutual Non-Disparagement. The Parties to this Agreement shall refrain from making any negative, critical or disparaging remarks about the other Party (as defined hereinabove to include elected and appointed officials, employees and agents). A negative, critical or disparaging remark is any communication (oral, gesture, written) which would or might cause or tend to cause humiliation or embarrassment or which might cause a recipient of that communication to question the business condition, integrity, service, quality, confidence or good character of any of Parties or entities.

Section 9. Construction. This Agreement shall not be construed more strictly against one Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by one of the Parties, it being recognized that the terms and conditions of this Agreement are the result of arm's-length negotiations between the Parties.

Section 10. No Admission of Wrongdoing. This Agreement shall not in any way be construed as an admission by either Party of any acts of wrongdoing whatsoever against the other Party.

Section 11. Governing Law: Jurisdiction. This Agreement shall be governed by and shall be interpreted in accordance with the laws of the State of Ohio; and the Parties hereby confer exclusive jurisdiction upon the state and federal courts in Ohio to determine any dispute arising out of or related to this Agreement or breach hereof.

Section 12. Entire Agreement. This Agreement and any Exhibits appended to this Agreement set forth the entire agreement between the Parties and fully supersede any and all prior agreements or understandings between the Parties pertaining to the subject matter contained herein.

Section 13. Binding Agreement. This Agreement shall be binding upon the Parties, their heirs, executors, personal representatives, elected and appointed officials, successors, assigns, officers and agents.

Section 14. Effect of Agreement. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against an action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

Section 15. Execution and Multiple Counterparts. This Agreement may be executed by electronic mail, facsimile or in counterparts, each of which shall be deemed an original and all of which shall be deemed to be one and the same instrument.

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This Agreement has been executed on the dates as set forth below.

DEBORAH L. NOBLE

Date: 4-18-18

Deborah L. Noble  
Signature

CITY OF BEACHWOOD, OHIO

Date: 4/17/18

By: Martin S. Horwitz  
Martin S. Horwitz  
Its: Mayor

I have read and carefully considered this Separation Agreement and Release, have had an opportunity to ask questions about it and have had my questions answered. Further, I have had the opportunity to discuss this Agreement with my family and attorney. I am signing this Agreement freely and voluntarily on the date indicated below my signature.

Date: 4-18-18

Deborah L. Noble  
Deborah L. Noble

APPROVED AS TO FORM

Diane M. Catron  
CITY LAW DEPARTMENT  
 LAW DIRECTOR  
 ASSISTANT LAW DIRECTOR  
25325 FAIRMOUNT BOULEVARD  
BEACHWOOD, OHIO 44122  
(216) 595-5462  
4.17.18

EXHIBIT "A"

RELEASE

1. I, Deborah L Noble, was the Mayor's Executive Secretary for the City of Beachwood and was employed by the City of Beachwood from October 13, 1997 to August 12, 2018; and
2. I laid off from my employment with the City of Beachwood effective August 12, 2018 for lack of work; and
3. I entered into a Separation Agreement and Release with the City of Beachwood on April \_\_\_\_\_, 2018 ("Agreement").

NOW THEREFORE, in and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual promises contained in the Agreement, and the performance of the terms and conditions contained therein by the City of Beachwood, I and my, assigns, heirs, and executors hereby release and forever discharge Beachwood and each and every one of its present, future and former employees, elected and appointed officials, officers, directors, agents, and legal representatives ("Beachwood Releasees"), from any and all claims, demands, liabilities, and causes of action of every nature, known or unknown, which have existed or exist now and which are in any way connected with, or arise out of, my employment with or separation from Beachwood.

I understand that there are various federal, state and local laws that regulate the payment of wages and that prohibit employment discrimination on the basis of, among other things, age, sex, race, color, national origin, religion and disability, and that these laws are enforced by various government agencies. I, for myself and my heirs, personal representatives, assigns, successors, attorneys, and agents hereby release and forever discharge Beachwood Releasees from any and all lawsuits asserting claims which I now have, or ever had, under the Fair Labor Standards Act, Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Family and Medical Leave Act, the Equal Pay Act, and Ohio law, and hereby releases and forever discharge Beachwood Releasees from any liability for any personal right of recovery of any kind that I now have, or ever had, including the right to recover unpaid wages, the right of reinstatement, or the right to recover damages in my own lawsuit or in a lawsuit brought on my behalf by the U.S. Department of Labor, Equal Employment Opportunity Commission or other governmental agency, under the Americans with Disabilities Act, the Age Discrimination in Employment Act, Title VII of the Civil Right Act of 1964, the Family and Medical Leave Act, the Equal Pay Act, and Ohio law arising out of, or relating to my employment with or separation from Beachwood.

I further acknowledge and agree that I have been paid by Beachwood for all work performed and that I have been paid all wages, compensation and benefits to which I am entitled as of the date of this Agreement.

I understand and acknowledge that I might hereafter discover facts different from or in addition to those I now know or believe to be true with respect to the released claims and I expressly agree to assume the risk of possible discovery of additional or different facts, and further agree that the Agreement shall be and remain effective in all respects regardless of such additional or different discovered facts.

I hereby specifically release, discharge and waive, but not by way of limitation, any claim, demand, or cause of action based on the theories of wrongful or unjust termination, breach of contract (express or implied), promissory estoppel, negligent or intentional conduct, breach of an implied covenant of good faith and fair dealing, defamation, intentional or negligent inflictions of emotional distress, false light, invasion of privacy and any and all forms of employment discrimination, as well as claims for attorneys' fees, expenses, and costs related to any of the foregoing.

*This waiver and release does not limit my right to file a charge, testify, assist or participate in any manner in any government investigation, hearing or proceeding including under any employment law including, but not limited to, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act, or any state civil rights Act. I understand that I retain the right to communicate with the EEOC and comparable state or local agencies and such communication can be initiated by me or in response to the government and is not limited by any non-disparagement obligation under this Agreement. However, if any third party, such as a government agency, allows me to file a claim, or bring any claim or conducts an investigation against Beachwood Releasees on my behalf, I waive and agree to relinquish any damages or other individual relief that may be awarded as a result of any such proceedings. Further, I agree that I will not file, commence, institute, maintain, prosecute or voluntarily aid any action at law or equity, or otherwise prosecute or sue any of the parties released by this Agreement, either affirmatively or by way of cross-complaint, defense or counterclaim, or in any other manner with respect to claims released in this Agreement.*

I acknowledge that I have been advised in writing to seek the advice of an attorney of my own choosing before signing the Agreement. I may consider this Agreement for at least twenty-one (21) days from the date I receive this Agreement. If I elect to sign this Agreement in less than twenty-one (21) days, then I am waiving my right to consider this Agreement for up to twenty-one (21) days. I shall also have the right to revoke this Agreement at any time within seven (7) days after the date I have signed it. To revoke the Agreement, I must cause a signed copy of this Agreement, marked "Revoked," to be delivered to Martin S. Horwitz, Mayor of the City of Beachwood, at Beachwood City Hall before the end of the seven (7) day period. The date of signing, as indicated next to my signature, will mark the beginning of the seven (7) day period. This Agreement will become effective on the 8<sup>th</sup> day after I sign it, provided that it has not been revoked before that day.



I understand and acknowledge that this Release shall not in any way be construed as an admission by either Party of any acts of wrongdoing whatsoever against the other Party.

I understand that this Release shall be governed by and shall be interpreted in accordance with the laws of the State of Ohio; and the Parties hereby confer exclusive jurisdiction upon the state and federal courts in Ohio to determine any dispute arising out of or related to this Agreement or breach hereof.

I acknowledge that this Release may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Agreement.

This Release may be executed by electronic mail, facsimile or in counterparts, each of which shall be deemed an original and all of which shall be deemed to be one and the same instrument.

DEBORAH L. NOBLE

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

\_\_\_\_\_  
Signature

I have read and carefully considered this Separation Agreement and Release, have had an opportunity to ask questions about it and have had my questions answered. Further, I have had the opportunity to discuss this Agreement with my family and attorney. I am signing this Agreement freely and voluntarily on the date indicated below my signature.

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

\_\_\_\_\_  
Deborah L. Noble