

**SETTLEMENT AND RELEASE AGREEMENT**

THIS SETTLEMENT AND RELEASE AGREEMENT, including the attached Addendum, (the "Agreement") is made and entered into this 3<sup>rd</sup> day of August, 2018, by the undersigned Johnnie J. Rush ("Claimant") and the City of Asheville ("Asheville") and is given in good faith;

WITNESSETH:

WHEREAS, Claimant alleges that he suffered damages as the proximate result of an incident that occurred on August 24-25, 2017, involving Claimant's stop and arrest by officers of the Asheville Police Department ("APD") within Asheville city limits (the "Incident"); and

WHEREAS, Claimant alleges the damages complained of resulted from the breach of a legal duty by APD Officer Chris Hickman ("Hickman") and other APD officers (the City of Asheville, Asheville's elected officials and employees, including, but not limited to APD officers, are collectively included in the term "Asheville") and has made claims for his damages against Asheville (the "Claim"); and

WHEREAS, Asheville does not admit that it is liable to Claimant as alleged in the Claim; and

WHEREAS, the undersigned Claimant has carefully considered the matter and determined it would be in his best interest to compromise all claims against Asheville for and in consideration of the total sum of \$650,000.00, payable as set forth on the attached Addendum on or before August 17, 2018. This \$650,000.00 payment to Claimant is being made specifically for claims alleged by Claimant against Asheville pursuant to 42 USC §1983 and not arising out of any claim for which Asheville has immunity, but by executing this Agreement, Claimant

agrees to a release of all claims of whatsoever nature against Asheville and not just the 42 USC §1983 claims.

By his signature below, the Claimant, on behalf of himself, his assigns, heirs and personal representatives, does hereby release, acquit and forever discharge Asheville, as well as its successors, predecessors, assigns, Council members, officers, representatives, employees, and agents, of and from any, every and all actions, causes of action, claims, demands, damages, costs and expenses, attorneys' fees, and any other claim, known or unknown, whether for property damage, personal injury, death, or otherwise, arising or resulting from any and all known or unknown injuries or damages suffered in the Incident, which incident provides the subject matter of the Claim.

The undersigned Claimant likewise, hereby declares that he fully understands that this is a release of all claims against Asheville that will forever bar any further action of any kind by him, his assigns, heirs or personal representatives against the parties released herein arising out of any damages, injuries or death that are alleged to have been caused as a result of the Incident described in the Claim; that no representations concerning the nature and extent of any injuries, disabilities, damages, or death have been made by any physician, attorney or agent of the parties hereby released; that he is not relying on any representations made by the parties released regarding the nature and extent of their legal liability; and that in making this release he has not been influenced to any extent whatsoever by the parties hereby released, nor by any person or persons representing any one or more of the parties hereby released, said settlement and release of all claims having been made by him after a full, frank and fair examination of all of the facts pertaining to said settlement and release of all claims, and after consulting with his legal counsel.

In further consideration of the aforesaid payment, Claimant hereby agrees, covenants and promises to obtain any necessary approval and ratification of this settlement by any and all persons, firms, corporations or other entities who may be subrogated to any rights Claimant may have against the parties herein released (or who may have a lien on or other claim to the settlement proceeds), including but not limited to, rights as a result of services rendered or payments made to or on behalf of Claimant in connection with any damages Claimant alleges resulted from the Incident; and to that end Claimant further agrees, covenants and promises to hold harmless and indemnify the parties herein released against all such subrogation, lien or other claims, regardless of the number or amount thereof.

This Agreement constitutes the ENTIRE AGREEMENT between the parties hereto, and the terms and provisions contained herein are contractual and not a mere recital.

Each party agrees to bear their own attorney's fees and costs associated with this matter.

The parties agree that this Agreement may be executed in multiple counterparts, all of which taken together shall collectively constitute one agreement binding on the parties.

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

The undersigned Claimant further declares and represents that he has carefully read the foregoing Agreement, knows the contents thereof and has freely executed the same.

WITNESS our hand and seal effective the day and year first above written.

Johnnie J. Rush (SEAL)  
Johnnie J. Rush

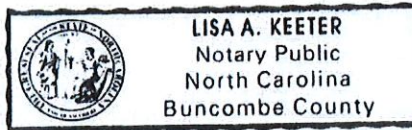
STATE OF NORTH CAROLINA  
COUNTY OF Buncombe

I, Lisa A. Keeter, Notary Public, do hereby certify that Johnnie J. Rush personally appeared before me this day and acknowledged the due execution of the foregoing Settlement and Release Agreement and acknowledged to me that it was voluntarily, freely and knowingly executed.

Witness my hand and seal, this the 2 day of August, 2018.

Lisa A. Keeter  
Lisa A. Keeter, Notary Public  
Printed Name

My Commission Expires: July 20, 2023



Esther Manheimer (SEAL)  
Esther Manheimer (Name)  
Mayor (Title)  
CITY OF ASHEVILLE

STATE OF NORTH CAROLINA  
COUNTY OF Buncombe

I, K. McLean Moore, Notary Public, do hereby certify that Esther Manheimer (Name), Mayor (Title), on behalf of the City of Asheville, personally appeared before me this day and acknowledged the due execution of the foregoing Settlement and Release Agreement and acknowledged to me that it was voluntarily, freely and knowingly executed.

Witness my hand and seal, this the 3 day of August, 2018.

K MCLEAN MOORE  
NOTARY PUBLIC  
Buncombe County  
North Carolina  
My Commission Expires 11-28-2021

K. McLean Moore  
K. McLean Moore, Notary Public  
Printed Name  
My Commission Expires: 11-28-2021

**Addendum to “Settlement and Release Agreement”  
Between Johnnie J. Rush and City of Asheville, North Carolina**

In consideration of the foregoing Settlement and Release Agreement it is understood and agreed that the City of Asheville agrees to pay the total sum of Six Hundred and Fifty Thousand Dollars (\$650,000.00) comprised of cash and the cost to fund future Periodic Payments as outlined below:

1. \$307,500 to Ferguson Chambers & Sumter, P.A
2. Asheville agrees to pay, or cause to be paid by the Assignee, **Periodic Payments made payable to Johnnie J. Rush (Payee) according to the schedule as follows:**

**Life with Certain Annuity:** \$855.00 payable monthly, guaranteed for 30 years beginning on 08/01/2021 with the last guaranteed payment 07/01/2051

**Life with Certain Annuity:** \$2,016.00 payable annually, guaranteed for 30 years beginning on 11/20/2021 with the last guaranteed payment 11/20/2050

**Period Certain Annuity:** \$584.00 payable monthly, guaranteed for 5 years beginning on 12/04/2032 with the last guaranteed payment 11/04/2037

**Period Certain Annuity:** \$10,218.00 payable annually, guaranteed for 5 years beginning on 12/04/2032 with the last guaranteed payment 12/04/2036

**Period Certain Annuity:** \$544.00 payable monthly, guaranteed for 5 years beginning on 05/11/2031 with the last guaranteed payment 04/11/2036

**Period Certain Annuity:** \$9,558.00 payable annually, guaranteed for 5 years beginning on 05/11/2031 with the last guaranteed payment 05/11/2035

Upon execution by Johnnie J. Rush and City of Asheville of a Qualified Assignment and Release Agreement (“QAR”) and receipt of written confirmation from the Assignee that it has all information it needs and is prepared to execute the QAR, the City of Asheville will fund the obligation for Periodic Payments by a payment of \$342,500.00 (the “Annuity Premium”) paid directly to its Assignee, **BHG Structured Settlements, Inc.** (the “Assignee”). Once the City of Asheville has funded the obligation for Periodic Payments to the Assignee and the QAR is fully executed, the City of Asheville shall have satisfied all of its obligations under the Settlement and Release Agreement and shall have no further obligations to administer and/or make the Periodic Payments or any other payments whatsoever. The Assignee has indicated that it will use all reasonable efforts to provide a fully executed QAR within three (3) business days of receiving the Annuity Premium. If, however, the QAR is not fully executed by the Assignee within fourteen (14) business days of receiving the Annuity Premium, the City of Asheville shall have the right to instruct the Assignee to disburse the Annuity Premium directly to the Payee as a cash settlement and the City of Asheville shall have no further obligations or liability whatsoever to make the Periodic Payments and Payee expressly agrees that in doing so, the City of Asheville will have satisfied all of its obligations under the Settlement and

## Release Agreement.

All sums set forth herein constitute damages on account of personal injuries and sickness in a case involving physical injury or physical sickness within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

### Right to Payments

Payee acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by any payee; nor shall any payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

### Payee's Beneficiary

Any payments to be made after the death of any Payee pursuant to the terms of this Settlement Agreement shall be made to such person or entity as shall be designated in writing by Payee to the Assignee. If no person or entity is so designated by Payee, or if the person designated is not living at the time of the Payee's death, such payments shall be made to the estate of the Payee. No such designation, nor any revocations thereof, shall be effective unless it is in writing and delivered to the Assignee. The designation must be in a form acceptable to the Assignee before such payments are made.

### Consent to Qualified Assignment

Payee acknowledges and agrees that immediately following the execution of the Settlement and Release Agreement and this Addendum, the City of Asheville will make a "qualified assignment", within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of the City of Asheville's liability to make the Periodic Payments set forth above to the Assignee.

The assignment is hereby accepted by the Payee without right of rejection and completely releases and discharges the City of Asheville from all liability to make the Periodic Payments obligation assigned to the Assignee, including the failure of Assignee to make any of the Periodic Payments and/or Annuity Issuer to fund any of the Periodic Payments for any reason whatsoever. The Payee recognizes that, as a result of the assignment, the Assignee will be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the City of Asheville are final, irrevocable and absolute.

### Right to Purchase an Annuity

The Assignee reserves the right to fund the liability to make the Periodic Payments through the purchase of an annuity policy from **Berkshire Hathaway Life Insurance Company of Nebraska** (the "Annuity Issuer"). The Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Assignee may have **Berkshire Hathaway Life Insurance Company of Nebraska** mail payments directly to the Payee. The Payee shall be responsible for maintaining a current mailing address with **Berkshire Hathaway Life Insurance Company of Nebraska**.

**Discharge of Obligation**

The obligation assumed by Assignee with respect to any required payment shall be discharged upon the mailing on or before the due date of a valid check in the amount specified to the address of record for Payee, or by direct deposit or electronic funds transfer if so requested. However, if a check is lost or otherwise not received, the Annuity Issuer, upon notification of said check being lost, or not received, shall promptly reissue said check, subject to verification of "stop payment" that said check has not been negotiated. Payee recognizes as a result of the execution of the Qualified Assignment and Release Agreement contemporaneously herewith, Assignee shall be the sole obligor with respect to the obligations assigned, and that all other releases that pertain to the liability of City of Asheville are final, irrevocable and absolute.

WITNESS our hand and seal effective the day and year first above written.

Johnnie J. Rush (SEAL)  
Johnnie J. Rush

STATE OF NORTH CAROLINA  
COUNTY OF Buncombe

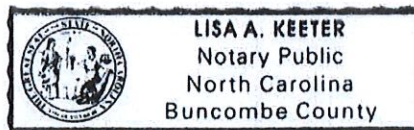
I, Lisa A. Keeter, Notary Public, do hereby certify that Johnnie J. Rush personally appeared before me this day and acknowledged the due execution of the foregoing Addendum to the "Settlement and Release Agreement" and acknowledged to me that it was voluntarily, freely and knowingly executed.

Witness my hand and seal, this the 2 day of August, 2018.

Lisa A. Keeter  
Lisa A. Keeter, Notary Public

Printed Name

My Commission Expires: July 28, 2023





*Esther Manheimer*

(SEAL)

Esther Manheimer (Name)  
Mayor (Title) CITY OF ASHEVILLE

STATE OF NORTH CAROLINA  
COUNTY OF Buncombe

I, K. Mclean Moore, Notary Public, do hereby certify that  
Esther Manheimer (Name), Mayor (Title), on behalf of the City  
of Asheville, personally appeared before me this day and acknowledged the due execution of the  
foregoing Addendum to the "Settlement and Release Agreement" and acknowledged to me that  
it was voluntarily, freely and knowingly executed.

Witness my hand and seal, this the 3 day of August, 2018.

*K. Mclean Moore*  
K. Mclean Moore, Notary Public  
Printed Name

My Commission Expires: 11-28-2021

K MCLEAN MOORE  
NOTARY PUBLIC  
Buncombe County  
North Carolina  
My Commission Expires 11-28-2021