

VINNY BARILE
Mayor

FRANK FENDER
Vice Mayor

JAMES W. CAMPO, CFP
Commissioner

DAVID KURZMAN
Commissioner

KAIJA MAYFIELD
Commissioner

TOWN OF SEWALL'S POINT



PAMELA MAC'KIE WALKER
Town Manager

CHERYL WHITE, MMC
Town Clerk

TINA CIECHANOWSKI
Chief of Police

JOHN ADAMS
Building Official

SPECIAL MEETING/WORKSHOP
October 15, 2019
5:30 P.M.

CALL TO ORDER

Pledge to the Flag
Roll Call
Additions, Deletions or Changes to the Agenda

PUBLIC COMMENT ON NON-AGENDA ITEMS

PLEASE SUBMIT A COMMENT CARD TO THE TOWN CLERK AND LIMIT YOUR COMMENTS TO THREE MINUTES.

DISCUSSION

1. Town Manager Contract (DRAFT)

COMMISSIONERS OR STAFF COMMENTS

ADJOURN

It is the policy of the Sewall's Point Town Commission that all persons addressing a town board or attending a Town board meeting shall conduct themselves in a manner that does not disrupt the orderly and efficient conduct of the meeting. Boisterous or unruly behavior; threatening or inciting an immediate breach of the peace; or use of profane, slanderous or obscene speech will not be tolerated and could result in ejection from the meeting after warning from the presiding officer.

In accordance with the provisions of the Americans with Disabilities Act (ADA) this document may be requested in an alternate format. Persons in need of a special accommodation to participate in this proceeding shall, within 3 working days prior to any proceeding, contact the Town Clerk's office, One South Sewall's Point Road, Sewall's Point, Florida 34996 (772)287-2455. If any person decides to appeal any decision made by the Town Commission with regard to any matter considered at such meeting or hearing, s/he will need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.



Town of Sewall's Point
Town Manager Agreement

THIS TOWN MANAGER AGREEMENT ("Agreement") is made and entered into the 15th day of October, 2019, by and between the Town of Sewall's Point, Florida, a Florida municipal corporation (the "Town" or "Employer") and Michelle Lee Berger (the "Manager" or "Employee").

WITNESSETH:

WHEREAS, the Town Commission, on behalf of the Town, desires to employ Employee, as the Town Manager of the Town, pursuant to the terms, conditions and provisions of this Agreement;

WHEREAS, the Manager has agreed to employment as the Town Manager, subject to the terms, conditions and provisions of this Agreement.

NOW, THEREFORE, the Town and the Manager, for and in consideration of the terms, conditions and provisions hereinafter established, the sufficiency of which is hereby acknowledged, have agreed as follows:

Section 1. **TERMS OF EMPLOYMENT**

A. The Agreement shall commence on October 21, 2019 and shall continue for a term of two (2) years (through October 21, 2021) unless terminated as provided in Section 4 of this Agreement.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Town Commission at any time upon an affirmative vote of not less than three (3) members of the Town Commission to terminate this Agreement and the services of the Manager at any time. In such event, the provisions set forth in Section 4 of this Agreement shall apply.

C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Manager to resign at any time from her position with the Town, subject to the notice provisions set forth in Section 4 of this Agreement.

Section 2. **DUTIES AND RESPONSIBILITIES**

A. The Commission does hereby employ Manager as Town Manager to perform the Town Manager's duties faithfully, industriously and to the best of her ability in a professional, ethical and competent manner. She shall perform these duties in accordance with and pursuant to all the Town's Charter, ordinance and applicable laws, including, but not limited to, the responsibility to:

1. Employ, on behalf of the Town, all other employees of the Town as defined in the Town's Charter.
2. Direct, assign, reassign and evaluate all of the employees of the Town.
3. Develop and establish internal regulations, rules, and procedures which the Manager deems necessary for the efficient and effective operation of the Town.

4. Complete her duties as assigned by the Town Commission.
5. Complete all duties outlined in the Town Charter and/or the Town's Ordinances.

B. The Town's business and management affairs obligate the Manager to routinely work or represent the Town beyond regular or customary Town Hall business office hours or work days.

C. The Town Manager shall devote a minimum of 40 hours a week to providing services to the Town either at Town Hall or on behalf of the Town at other appropriate business venues, such as Martin County Commission meetings, or meetings with officials from other jurisdictions. The parties agree that telecommuting and/or working remotely during normal business hours may not be effective management, other than for exceptional circumstances, and with the prior written notification to the Town Commission.

D. Manager agrees to comply with all policies and procedures of the Town and to comply with the principles set forth in the International City/County Management Association (ICMA) Code of Ethics.

E. As a salaried exempt employee, Manager is not entitled to overtime, compensatory time, or flex time.

F. Manager shall not be employed by any other employer during the Term of this Agreement. The term "employed" as used in this section, shall not be construed to exclude, with prior Commission approval, occasional teaching, writing or consulting

performed on the Manager's time off not in excess of an average of eight (8) hours per week outside of regular business hours in a non-conflicting capacity and in accordance with the provisions of Florida Statutes relating to ethics. Manager understands and agrees that should a Town emergency or urgent event arise, the Town work is Manager's priority and she is required to attend to Town matters to the disadvantage of his/her private business or related activities if necessary for the proper operation of the Town. Manager shall devote her full time to act as the Manager of the Town and to carry out to the best of her abilities all the duties imposed upon her by the Job Description, the Town's Policies and Procedures, the direction of the Commission, applicable laws, and such other duties as the Town may assign from time to time. During the Term of this Agreement, Manager shall not hold office in any political party or political organization.

Section 3. **SALARY, PERFORMANCE REVIEW AND EXTENSION OF AGREEMENT**

A. The Town agrees to pay Manager, for services rendered, the annual Base Salary of One Hundred Ten Thousand and No/100 Dollars (\$110,000.00), in installments at the same time as other employees of the Town are paid. It is understood that the job title of Town Manager has been removed from the Town's pay plan, and only the terms and conditions of this Agreement shall govern the salary of the Manager. However, the Manager shall comply with the Town's personnel policies to the extent that they do not conflict with this Agreement. If, due to financial reasons, all of the Town's full time employees have their salary or wages reduced, the Manager's salary shall be reduced at the same percentage.

B. A performance review, evaluation and discussion regarding salary shall be completed annually, at each October meeting of the Town Commission. In addition, a performance review and evaluation shall be completed in January 2020 and April 2020. The evaluation form and process to be used shall be in such form as the Town Commission deems appropriate.

Section 4. **TERMINATION OF EMPLOYMENT**

A. Without Cause. The Town Manager shall serve at the pleasure of the Town Commission, and the Town Commission may terminate this Agreement and the Town Manager's Employment with the Town at any time, prior to or after its expiration for any reason or for no reason. The Town Manager's employment relationship with the Town shall be deemed to be employment at will. In the event Manager is notified by the Town that her employment is to be terminated without cause by the Commission, she shall be eligible to receive Severance Pay equal to the gross amount of ten (10) weeks' Base Salary in effect at the time of termination, and such severance pay shall not include any benefits or perquisites as may be permitted by section 215.425, Florida Statutes (hereafter referred to as "Severance Pay"). Severance Pay shall be made payable within 30 calendar days of the Termination Date and only after receipt of the executed General Release by Manager in favor of the Town in a lump sum payment, less applicable withholdings and other required deductions. The General Release is attached to this Agreement as Exhibit B. In addition, the Town agrees to pay any accrued and unused vacation and sick leave, if any, pursuant to the Town's Personnel Rules and Regulations and this Agreement as of the effective date of termination.

B. Resignation. In the event Manager intends to resign her position, then Manager shall provide the Town with a minimum of thirty (30) days written notice in advance, unless the parties otherwise agree in writing. In the event Manager resigns, she will not receive any Severance Pay. The Town agrees to pay any accrued and unused vacation and sick leave, if any, pursuant to the Town's Personnel Rules and Regulations and this Agreement on the effective date of resignation.

C. With Cause. The Town Commission may, in its sole discretion, terminate the Manager from her position and terminate this Agreement at any time With Cause by providing written notice to Manager describing the actions claimed by the Town constituting such grounds and the termination date. Termination With Cause shall require an affirmative vote of three (3) Town Commissioners at a publicly noticed meeting. "With Cause" is defined as termination based upon any of the following actions by the Manager:

- i. Fraud;
- ii. Embezzlement;
- iii. Conviction or a plea of guilty or no contest to a felony whether or not adjudication is withheld;
- iv. Conviction or a plea of guilty or no contest to a misdemeanor or felony whether or not adjudication is withheld for an offense involving Town business or a crime of dishonesty;
- v. Violation of Florida's Code of Ethics;
- vi. Violation of the Town's Drug-Free Workplace Policy;

- vii. Violation of the Town's policies against harassment, discrimination or its Equal Employment Opportunity Policy; or
- viii. Misconduct as defined in section 443.036(29), Florida Statutes, as amended from time to time.
- ix. In the event Manager makes formal application for full time employment elsewhere while serving as Town Manager, he/she shall be required to provide written notice to the Town Commission simultaneously with such application; failure to do so shall be considered "with cause" under this Agreement.
- x. Any material breach of this agreement by Manager.
- xi. Misfeasance, malfeasance and/or nonfeasance in performance of the Town Manager's duties and responsibilities.
- xii. Neglect of duty; including the inability or unwillingness to properly discharge the responsibilities of office.
- xiii. Violation of any written substantive Town policy, rule or regulation, which would subject any other Town employee to termination.
- xiv. The commission of any act which involves moral turpitude or which causes the Town disrepute.
- xv. Material violation of the International City/County Management Association Code of Ethics.

- xvi. Failure to correct specific conduct or perform certain duties satisfactorily after being given written notice and reasonable time under the circumstances to take such action.

If Manager is terminated With Cause, all compensation and benefits shall cease on the Termination Date or in accordance with applicable benefit plan provisions and the Manager shall not receive any Severance Pay. The Town agrees to pay any accrued and unused vacation and sick leave, if any, pursuant to the Town's Personnel Rules and Regulations and this Agreement as of the effective date of termination.

D. Death. In the event of Manager's death, this Agreement shall be terminated as of the date of death. In the event of Manager's death, the Town shall pay Manager's designated beneficiary any accrued and unused vacation and sick leave, if any, pursuant to the Town's Personnel Rules and Regulations and this Agreement as of the effective date of termination due Manager (excluding Severance Pay) through the date of death pursuant to this Agreement said payment to be made within thirty (30) working days of the Manager's death.

E. Disability. If the Town Manager becomes permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health for a period of four consecutive weeks whether paid or unpaid beyond any accrued vacation, sick leave, if any, or holiday time, the Town shall have the option to terminate this Agreement. In such event, the Manager shall be paid any accrued and unused vacation and sick leave pursuant to the Town's Personnel Rules and Regulations,

and this Agreement as of the effective date of termination, but the Manager shall not receive any severance pay.

Section 5. **CELL PHONE AND CAR ALLOWANCE**

A. The Town shall provide the Town Manager with a cell phone allowance of \$75.00 per month to compensate her for the business use on her personal phone.

B. Manager is responsible for any income tax liability relating to such cell phone allowance.

C. Employer shall provide Manager with a monthly car allowance of Two Hundred and No/100 Dollars (\$200.00) in full payment of any expense arising from this employment, providing the Manager maintains personal comprehensive car insurance coverage for property damage and bodily injury consistent with the Town's current automobile policy limits (minimum of \$100,000/\$300,000/\$100,000 coverage). Manager shall be responsible for any tax consequences relating to such car allowance. She shall submit proof to the Town Commission of this coverage and list on the Policy the Town as co-insured on the policy, and as an entity that should be notified in writing if there is any change in this coverage.

Section 6. **ANNUAL LEAVE**

Manager shall receive and accrue annual leave in the same manner as other exempt employees of the Town based on the criteria set out in the Town Personnel Rules and be compensated for same upon separation to the same extent as general employees of the Town based on the criteria set out in the Town Personnel Rules and Regulations.

No more than two (2) calendar weeks of vacation may be taken at one time without the prior approval of the Town Commission.

Section 7. **HOLIDAYS**

Manager shall be entitled to the same paid holidays as are provided to the other general employees of the Town.

Section 8. **DISABILITY, HEALTH AND LIFE INSURANCE**

The Town agrees to provide for health, hospitalization, disability, vision, dental and comprehensive medical insurance for the Manager and family equal to that which is provided to all other employees of the Town subject to the same terms and conditions applicable to the other general employees of the Town.

Section 9. **DEFERRED COMPENSATION**

The Town Manager may participate in the Town's Deferred Compensation Plan under the same terms and conditions offered to other Town employees. Under the plan in effect on the date of signing this contract the Town contributes 15% of each employee's salary to a Retirement plan.

Section 10. **PROFESSIONAL/EDUCATIONAL PARTICIPATION**

The Town agrees to pay reasonable and customary travel and subsistence expense for the Town Manager's travel to and attendance at least one professional conference directed to municipal managers. The Manager's choice of conference must be approved in advance by Town Commission. The Town may choose to pay for the

Town Manager's attendance at other seminars, conferences, and committee meetings as it deems appropriate and approved by Commission action. Town also agrees to pay reasonable and appropriate professional dues and subscriptions on behalf of Manager for the purpose of allowing him/her participation in direct job-related associations, subject to budget constraints and Commission approval.

Section 11. **INDEMNIFICATION**

The Town shall provide a legal defense, and indemnification against any tort, professional liability claim or demand or other legal action arising out of an alleged act or omission occurring within the scope of Manager's employment and performance of Manager's duties and functions, as provided in Town policy "defense of public officers" dated March 2, 2016, a copy of which is attached hereto as Exhibit A. The Town Commission reserves the right to revise this policy. If there is a claim or claims, as described above, against Manager that is not covered by any of the Town's insurance policies, then the Commission, in its sole discretion, may cover all or a portion of Manager's defense costs and fees.

Section 12. **BONDING**

The Town shall bear the full cost of any fidelity or other bonds required of the Manager under any policy, regulation, law or ordinance.

Section 13. **OTHER TERMS AND CONDITIONS OF EMPLOYMENT**

The Town and Manager may mutually agree to modify or amend such other terms and conditions of employment as may be determined, from time to time, to be necessary or appropriate, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Town Charter or any other law.

Section 14. **GENERAL PROVISIONS**

A. The text herein shall constitute the entire Agreement between the parties. Any previous agreements or commitments of the parties are merged into this document and shall be of no force and effect.

B. This Agreement shall be interpreted pursuant to the Laws of the State of Florida. Venue for any dispute shall be Martin County, Florida.

C. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

D. General Releases. The General Release for the ten (10) week severance clause referenced in this Agreement, is attached hereto as Exhibit B and incorporated herein. By entering into this Agreement, Manager acknowledges that he/she has been advised to consult with personal legal counsel to review such General Release and has had adequate time to consider same.

E. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by the party.

F. This Agreement shall be binding upon and inure to the benefit of the heirs at law or personal representative of Town Manager.

G. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court construing this Agreement shall construe it more slightly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply to its fair meaning.

H. The Town Manager shall not be required to reside in the Town of Sewall's Point.

I. Post-Termination Name Clearing Meeting: Manager may avail herself of the Town's Post Termination Name-Clearing process in accordance with Town policy in effect at the time of termination, if any. However, in light of the organizational structure, Manager must submit any request for such meeting in writing to the City Attorney within 10 calendar days of the date of termination and such meeting will be scheduled to occur at a regular Commission Meeting with the Commission presiding at such meeting or, in lieu of attending, a meeting, Manager or the Town may choose for Manager to submit a written statement to be included in the Manager's personnel file. The meeting is not an appeal of the termination decision and the Commission shall not consider reinstatement at the Name Clearing Meeting, if such a meeting is held. The process is designed to

allow the employee to present information in the public record regarding the information forming the basis of the termination.

J. All notices required to be given under the terms of this Agreement or which any of the parties desires to give hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, addressed as follows:

TO: Mayor of Town of Sewall's Point
One Sewall's Point Road
Sewall's Point, Florida 34996

TO: Michelle Lee Berger
665 SW Yacht Basin Way
Stuart, Florida 34997

CC: Torcivia, Donlon, Goddeau & Ansay, P.A.
Attn: Town Attorney
701 Northpoint Parkway, Suite 209
West Palm Beach, Florida 33407

Any party may designate a change of address at any time by giving written notice thereof to the other parties.

IN WITNESS WHEREOF, the Town of Sewall's Point, Florida, has caused this Agreement to be signed and executed on its behalf by its Mayor and the Manager has signed and executed this Agreement, both in duplicate on the day and year first above written.

Witness

By: _____
Michelle Lee Berger, Town Manager

Town of Sewall's Point

Witness

By: _____
Vinny Barile, Mayor

Attest: _____
Cheryl White, Town Clerk

APPROVED AS TO LEGAL FORM
AND SUFFICIENCY

By: _____
Glen J. Torcivia, Town Attorney

DRAFT

EXHIBITS TO
TOWN MANAGER
AGREEMENT



TOWN OF SEWALL'S POINT

One S. Sewall's Point Road

Sewall's Point, Florida 34996

Tel 772-287-2455 Fax 772-220-4765

DEFENSE OF PUBLIC OFFICERS

March 2, 2016

POLICY:

Section 1. Civil actions; administrative proceedings (other than ethics).

A. *Provision of legal representation.* The Town or its insurance company shall provide an attorney to defend a mayor or commissioner against any administrative proceeding (other than one involving ethics) that arises out of the mayor or commissioner's course and scope of service in office or any civil action for any injury or damage suffered as a result of any act, event, or omission that arises out of the mayor or commissioner's course and scope of service in office, unless the mayor or commissioner acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The mere allegation that the mayor or commissioner acted outside the course and scope of service in office or acted in bad faith, malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property shall not preclude the Town, in its discretion from providing a defense. When providing a defense, the Town or its insurance company, in accordance with the terms of the insurance policy, may compromise and settle any such claim or suit and pay the amount of such settlement in its sole discretion. An administrative proceeding (other than involving an ethics claim) may include, but is not limited to any proceeding before the Florida Public Employees Relation Commission, the State of Florida Commission on Human Relations, or the Federal Equal Employment Opportunity Commission.

B. *Recovery of Reasonable attorneys' fees.* The Town shall not be liable for the acts or omissions of a mayor or commissioner committed while acting outside the course and scope of their service in office or committed in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety or property. If the Town's insurance policy allows the right to decline settlement and the mayor or commissioner declines to settle the administrative action as recommended by the insurance company or if the mayor or commissioner refuses to cooperate with the insurance company in its defense of the claim, he or she shall be responsible for the payment of all attorneys' fees, costs and other expenses that exceed the proposed settlement amount regardless of whether the mayor or commissioner was found to be at fault or not. In such instances where the Town has provided a defense, yet the mayor or commissioner was found to be at fault or personally liable for injury or damages, the mayor or commissioner shall reimburse the Town for any legal fees, costs, and expenses the Town has incurred or otherwise paid on their behalf in connection with the alleged conduct. Further, if the Town's insurance coverage excludes any reimbursements, fees or costs, the mayor or commissioner shall reimburse the Town for the same. Any payments owed to the Town shall become due and payable within thirty (30) days of the final judgment, including the conclusion of any appeal or within thirty (30) days of any settlement, if applicable.

EXHIBIT A – Page 2 of 3

Section 2. Civil action naming former mayor or commissioner.

Where the mayor or commissioner has left office prior to the Town or mayor or commissioner receiving notice of the administrative proceeding (other than one involving ethics) or civil action, the Town shall provide an attorney to defend the mayor or commissioner against any administrative proceeding initiated or civil action for any injury or damage suffered as a result of any act, event, or omission that arises out of the mayor or commissioner's course and scope of their office, unless mayor or commissioner acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In this situation, section 1.A. and 1.B. above shall also apply.

Section 3. Ethics proceedings.

A. *Provision of legal representation if Town has insurance coverage.* The Town may, in its discretion, provide an attorney or have its insurance company provide an attorney to defend the mayor or commissioner against complaints or charges brought before the State or local Commission on Ethics if it determines that the act, event, or omission arises out of the mayor or commissioner's course and scope of service in office, and that providing such defense serves a public purpose. Such defense may be provided regardless of whether the Town or mayor or commissioner receives notice of the charge prior to or after the mayor or commissioner's separation from office. If the Town and/or its insurance company choose not to provide the mayor or commissioner an attorney to defend against the ethics complaint or charge, the mayor or commissioner shall be responsible for his or her own defense.

B. *Limitation on reasonable attorneys' fees.* In such instances where the mayor or commissioner is found to have not violated the State or local Code of Ethics, the Town will be responsible for reasonable attorneys' fees and court costs up to the amount of coverage set forth in its applicable insurance policy. The mayor or commissioner shall be solely responsible for the balance of said costs and fees. If the mayor or commissioner paid for their own defense, the Town will reimburse the mayor or commissioner for his or her reasonable and documented attorneys' fees and court costs up to the maximum amount of coverage set forth in the insurance policy. If the Town provided a defense for the mayor or commissioner, the mayor or commissioner shall reimburse the Town for any costs and fees over the amount of insurance coverage. Such payment shall become due and payable upon written demand by the Town, or upon receipt of an invoice received from the attorney(s) handling the mayor or commissioner's defense.

C. *Recovery of attorneys' fees.* In such instances where the Town has provided a defense, yet the Mayor or Commissioner was found to have violated the State or local Code of Ethics, the Mayor or Commissioner shall reimburse the Town and/or the Town's insurance company for any and all legal fees, insurance deductibles, costs, and expenses the Town or its insurance company has incurred or otherwise paid on their behalf in connection with the alleged conduct. Further, if the Town's insurance coverage excludes any reimbursements, fees or costs, the mayor or commissioner shall reimburse the Town for the same. Any payments owed to the Town shall become due and payable upon written demand by the Town and/or the insurance company.

D. *Provision of legal representation if Town has no insurance coverage.* If the Town has no insurance coverage for defending a mayor or commissioner against complaints or charges brought before the State or local Commission on Ethics, the mayor or commissioner shall be responsible for his or her own defense. If the mayor or commissioner successfully defends against such ethics complaint or charge, the Town shall reimburse the mayor or commissioner for his or her reasonable and documented attorneys' fees and court costs up to a maximum of \$20,000.00.

EXHIBIT A – Page 3 of 3

However, the Town shall not reimburse the mayor or commissioner if he or she is found (1) to have acted outside the scope of his or her official duties or functions; or (2) to have acted in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard to human rights, safety, or property; or (3) to have violated the applicable ethics code.

Section 4. Request for Reimbursement.

A. Any mayor or commissioner who believes that he or she may be entitled to payment for reasonable attorneys' fees and court costs pursuant to the provisions of this policy shall first notify the Town through its town manager in writing when the mayor or commissioner is made aware of the legal action.

B. At the conclusion of the matter, the mayor or commissioner requesting reimbursement under this policy shall file a written request for reimbursement of such reasonable attorneys' fees and court costs with the town manager. This request shall set forth the following:

1. The name and current address and telephone number of the person making the request;
2. A description of the entity that conducted the investigation or proceeding;
3. Case number or file number, if known or available;
4. A description of each count, charge, or allegation made or investigated;
5. The date(s) that the incidents are alleged to have occurred;
6. The person's office or position of employment with the Town on the dates described in paragraph 5 above;
7. The reasons why such mayor or commissioner believes that the request meets the criteria set forth in this policy and the reasons why his or her fees and costs should be reimbursed by the Town;
8. The name, address and telephone number of the attorney or attorneys who represented such person against the counts, charges or allegations described above;
9. A copy of the fee arrangement or agreement, if applicable, between the mayor or commissioner and his or her attorney, the amount of attorney's fees and court costs paid for in defense of the counts, charges or allegations described above; and
10. Such other information as the town commission or town attorney may reasonably require.

Section 5. Definitions.

Reasonable attorneys' fees shall mean fees earned by an attorney or attorneys licensed to practice law in the State of Florida, based on the customary hourly rate charged in Martin County, Florida, for similar work performed by private attorneys within the County.

Section 6. Application.

This policy shall apply to alleged violations as described above filed in any judicial or administrative tribunal on or after the date of the adoption of this policy.

EXHIBIT B – Page 1 of 4

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (“Agreement”) is hereby made and entered into by and between _____ (“Employee”) and TOWN OF SEWALL’S POINT (hereinafter referred to as “Employer”). In exchange for the mutual promises set forth below and intending to be legally bound, the Employer and the Employee agree to the following terms and conditions:

- A. Employee was employed as the Town Manager of said Employer; and
- B. Employee is separated from employment effective _____, without cause. As such, the Employer shall have no obligation to employ Employee under any circumstances in the future.
- C. Employee recognizes that his/her last day of work is _____. However, if Employee accepts the terms and conditions of this Agreement and General Release, Employee shall receive Severance Pay in a gross amount equivalent to ten (10) weeks’ Base Salary.
- D. It is agreed and understood that neither the offer or acceptance of this Agreement nor the payment of any money or provision of benefits hereunder constitute or will be construed as an admission of liability or of any wrongdoing or violation of laws, rules or policies by the Employer or the Employee.
- E. Employee hereby releases and discharges the Employer (and all of its affiliates, successors, assigns, directors, officers, insurers, board members, Commission members, employees, and agents) from and against any and all liability to Employee upon claims, causes of action or obligations of every nature whatsoever, whether known or unknown, arising out of or relating to Employee’s employment, separation from employment, or any other act, event, failure to act or things which have occurred or were created at any time before or upon the date on which this Agreement is signed and becomes effective. Without limiting the generality hereof, this release covers claims or causes of action based upon all torts (such as, for example, negligence, fraud, defamation, wrongful discharge, invasion of privacy); express and implied contracts (except this Agreement); federal, state or local statutes and ordinances, including those which regulate employment practices (such as, for example, the Age Discrimination in Employment Act, Family Medical Leave Act, Federal Civil Rights Acts (including but not limited to 42 U.S.C.A Sections 1981 – 1988, 2000a-6, and 2000e-17); the Americans with Disabilities Act, the National Labor Relations Act; the Older Worker Benefit Protection Act; The Florida Civil Rights Act; any state or federal Whistle blower’s Act; Public Employee Relations Act; Title VII of the Civil Rights Act; the Civil Rights Act of 1991; the Reconstruction Era Civil Rights Act of 1866; the Employee Retirement Income Security Act; the Patient Protection and Affordable Health Care Act; the Genetic Information Nondiscrimination Act; the Public Health Services Act; Sarbanes-Oxley; the Rehabilitation Act of 1973; the Health Insurance Portability and Accountability Act; the Equal Pay Act; the Worker Adjustment and Retraining Notification Act; the Occupational Safety and Health Act; the Consolidated Omnibus Budget Reconciliation Act; the Florida Civil Rights Act; the Florida Equal Pay Act; any claims under Fla. Stat. 448.08 for unpaid wages and waivable rights under the Florida Constitution; and any and all amendments to such acts); any and all claims for violation of any statutory or administrative rules, regulations or codes; any right or entitlement to any individual relief including damages, attorneys’ fees, and costs which may be available through local, state, or federal regulatory agencies such as the EEOC; expenses, costs, fees, and/or attorneys’ fees, incurred or claimed in connection with any alleged claims; and every other source of legal rights and obligations which may validly be waived or released, except rights created or preserved expressly in this Agreement.

EXHIBIT B – Page 2 of 4

- F. The Employee makes the following representations to the Employer, each of which is necessary before the Employer will pay severance to the Employee under this Agreement:
- (1) that the payments and other benefits which the Employer has agreed to provide, as stated below, are payments and benefits to which she would not be entitled if it were not for this Agreement;
 - (2) that no consideration, promises, agreements or representations have been made to her to encourage her to sign this Agreement, except those that are contained in this Agreement;
 - (3) that she has read and understands each and every provision of this Agreement and any waiver pursuant to this Agreement is knowing and voluntary;
 - (4) that she has been advised by the Employer that, only upon reaching the age of 40 and not sooner, she has seven (7) days from the date she signs this Agreement to rescind her acceptance of this Agreement in writing by delivering such written rescission to the Town Attorney within the 7-day period;
 - (5) that she has been advised by the Employer that she should consult an attorney of her own choosing before signing this Agreement;
 - (6) that, provided she has reached the age of 40 and not sooner, she has had an adequate and reasonable period of time (at least 21 calendar days) to decide whether or not to sign this Agreement. Accordingly, failure to sign and deliver the Agreement to the Town Attorney on or before **5:00 p.m. on the 22nd day following the date of termination**, shall be deemed a rejection of the Agreement and she shall not be entitled to the benefits outlined herein to which she would not otherwise be entitled. Material or immaterial changes to this Agreement do not restart the running of the 21-day period.
 - (7) that she has not filed any complaints or initiated any other legal proceedings against the Employer before the date of signing this Agreement.
 - (8) that she has not assigned, transferred or purported to assign or transfer any claims released in this Agreement and General Release to any person, association or entity.
 - (9) that she has accurately reported all hours worked and has been paid in full for all time worked in accordance with the law and is owed no wages, whether in the form of straight time, overtime, or liquidated damages.
 - (10) that she has not suffered an occupational disease or disability or any on-the-job-related accident or injury of the type that might have entitled her to file a Workers' Compensation claim, whether temporary, permanent, partial or total.
 - (11) that she was provided and received all paid and unpaid leaves of absence to which she was entitled.
 - (12) that she assumes the risk for any mistake of fact now known or unknown and that she understands the significance of this Agreement and General Release.
 - (13) that she has the mental capacity to enter into this Agreement and General Release.
- G. In exchange for the general release and other promises and acknowledgments made by Employee in this Agreement, the Employer agrees to pay Employee Severance Pay equal to **ten (10) weeks of Base Salary** (less required withholding for federal, state and local taxes).
- H. Employee agrees (unless otherwise required by law) not to:

EXHIBIT B – Page 3 of 4

- (1) discuss the existence of the terms of this Agreement, subject to Section F(5);
 - (2) disclose to any third party any confidential information of the Employer;
 - (3) make any statements, whether verbal or written, that disparages or defames the Employer;
or
 - (4) file any claims waived by this Agreement.
- I. Employee agrees to indemnify, defend and hold Employer harmless from and against any cost or expense including, but not limited to, attorney's fees and costs at any level of trial and appeal, incurred by Employer with respect to its enforcement of the terms of this Agreement by any legal or equitable means. However, this provision does not apply to any claims made under the ADEA.
 - J. This Agreement shall inure to the benefit of and be binding upon the Employer and Employee and each of their successors, assigns, affiliates, devisees, heirs, administrators and representatives.
 - K. This Agreement constitutes the entire agreement by and among the parties hereto and there are no agreements or commitments by or among the parties, either verbal or written, except as expressly set forth herein.
 - L. Should any part, term, or provision of this Agreement be declared or be determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining parts, terms, or provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term, or provision shall be deemed not a part of this Agreement.
 - M. The Agreement shall be governed exclusively by Florida Law and venue for any action herein shall be in the courts of Martin County.
 - N. This Agreement and General Release shall not be construed against the party who drafted same.
 - O. The rights, responsibilities, and duties of the parties, and the agreements herein, shall continue to bind the parties in full force and effect until each and every obligation has been fully performed.
 - P. Employee will separately receive information regarding his/her eligibility to continue any medical insurance under COBRA at her sole cost and expense.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

EXHIBIT B – Page 4 of 4

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written below.

MANAGER

NAME

STATE OF FLORIDA

COUNTY OF MARTIN

The foregoing instrument was acknowledged before me this _____ day of _____ 20__ by _____, who is personally known to me, or has produced _____ as identification and did/did not take an oath.

Notary Public
Signature and Seal

My commission expires:

ATTEST

TOWN OF SEWALL'S POINT, FLORIDA

BY: _____
_____, Town Clerk

BY: _____
_____, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

BY: _____
_____, Town Attorney