

## SETTLEMENT AGREEMENT AND RELEASE

This document sets forth the terms and conditions of the Agreement and General Release (hereinafter "Agreement") by and between Allstate Fire and Casualty Insurance Company, (hereinafter "the Releasor") and Augusta, Georgia, (referred herein as "Augusta, Georgia" or "Releasee"). The term "Releasee" as used herein shall be defined as Augusta, Georgia, and all current and former commissioners, employees, servants, agents, officials, insurers, and attorneys, in their official and individual capacities, together with their predecessors, successors and assigns, both jointly and severally. In consideration of the mutual covenants and agreements set forth below, the parties agree as follows:

### RECITALS

On or about June 15, 2011 a tree limb fell at 940 D'Antignac Street, Augusta, Georgia 30901, and said limb fell on Theodore McNeal and two vehicles owned by Theodore McNeal. Theodore McNeal suffered injuries and Theodore McNeal's vehicles were damaged.

Augusta, Georgia, denies and continues to deny any liability to Releasor for claims arising out of or related to this event and desire to purchase their peace and to avoid the problem and expense of further litigation.

Releasor enters into this Release in order to provide for certain payments in full, final and complete settlement, satisfaction and discharge of any and all past, present or future claims which are or which might have been the subject of the Claim upon the terms and conditions set forth herein. Releasor desires to remise, release, acquit and forever discharge Augusta, Georgia, their respective past, present and future employees, partners, officers, directors, shareholders, principals, parents, direct or indirect subsidiaries and subsidiaries thereof, affiliates, divisions, agents, representatives, predecessors, successors, insurers, attorneys and assigns (collectively "Releasees.")

**NOW THEREFORE**, Releasor agrees as follows:

**1. RELEASE BY RELEASOR.** In consideration of the payment of One Thousand, Two Hundred, Fifty-Six and Thirty-Three Cents (\$1,256.33) (the "Payment"), Releasor has agreed to settle all claims against Augusta, Georgia for Subrogation Claim Number 0206929977 SRT. In consideration of the payment of Three Thousand, Six Hundred, Sixty-Seven and Forty Cents (\$3,667.40) (the "Payment"), Releasor has agreed to settle all claims against Augusta, Georgia for Subrogation Claim Number 0206930018 SRT. Releasor does hereby fully, finally, and completely remise, release, acquit and forever discharge the Releasees of and from any and all past, present or future claims, demands, obligations, lawsuits, actions, causes of action, loss of consortium claims, wrongful death claims, rights, damages, costs, expenses and compensation of any kind or nature whatsoever, known or unknown, foreseen or unforeseen, direct or indirect, fixed or contingent, whether based on a tort, contract or other theory of recovery, and regardless

of the theory of damages, which Releasor ever had, now has, or which may hereinafter accrue or otherwise be acquired on account of, or in any way growing out of, related to, or arising from, in any manner or fashion, the fallen tree branch at 940 D'Antignac Street, Augusta, Georgia 30901. This release on the part of Releasor shall be a fully binding and complete settlement between Releasor and Releasees.

In addition, it is specifically understood and agreed that the Payment is intended to compensate the Releasor for property damage, injuries, pecuniary damages and other elements of general damage and economic and non-economic damages that are uncertain in amount and that Releasor specifically agrees that in consideration of the Payment, Releasor releases any and all claims that it ever had, now has or may have for all items or damages, whether general or specific or punitive or exemplary, based upon, resulting from, arising out of, relating to, or connected directly or indirectly to the fallen tree branch at 940 D'Antignac Street, Augusta, Georgia 30901.

**2. SETTLEMENT NOT AN ADMISSION OF LIABILITY.** Releasor agrees that this Release is the compromise of doubtful and disputed claims and that the Payment made is not to be construed as an admission of liability, negligence, willful and wanton conduct, or fault of any kind whatsoever by Releasees, nor the validity of any claim to damages, but is to be construed as a compromise and settlement of all issues for purposes of avoiding controversy, litigation and expense. Releasor further agrees that all claims or allegations of fault, liability, negligence, and legal responsibility have been and are denied by Releasees.

**3. INDEMNIFICATION BY RELEASOR.** Releasor, in consideration of the promises set forth herein, the receipt and sufficiency of which is hereby acknowledged, hereby agrees to defend, indemnify and hold harmless Releasees against any and all claims, demands, and causes of action, including, but not limited to claims for contribution and indemnity, based upon allegations of negligence, strict liability or any other allegation of fault by Releasees that are asserted by any person or entity that the Releasor may make a claim against on account of, based upon, relating to or arising out of the fallen tree branch at 940 D'Antignac Street, Augusta, Georgia 30901.

**4. ATTORNEY'S FEES AND COURT COSTS.** As between Releasor and Releasees, each party shall bear its own attorneys fees and expenses and court costs incurred in connection with the lawsuit, this Release, the matters and documents referred to herein, the entry of a final judgment and all related matters.

**5. RELEASOR'S REPRESENTATIONS AND WARRANTIES.** In return for the foregoing consideration, the Releasor hereby warrants and represents that it is the sole owner of any claims, rights, counts, causes of action, obligations and demands released by the Releasor pursuant to this Release and which are in fact, released by the Releasor pursuant to this Release and that no other persons or entities have any interest in any claims, rights, counts, causes of action, obligations or demands which the Releasor releases pursuant to this Release and further covenant that he has not assigned any claims they may have against the Releasees to any person or entity.

**6. EXECUTION.** Releasor represents and warrants that the person executing this Agreement is duly authorized to do so, that this Agreement constitutes a valid and binding obligation and that it is authorized to act on behalf of all persons or entities described in this Release's definition of Releasor concerning all matters addressed in this Agreement.

**7. SUCCESSORS.** This Release shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

**8. ENTIRE AGREEMENT.** Releasor hereby agrees and represents that no promise or agreement not herein expressed has been made to him, and that this Release contains the entire understanding of the Releasor regarding the matters contained herein and that the terms of this Release are contractual and not merely a recital.

**SIGNATURES ON FOLLOWING PAGE**

**IN AGREEMENT HERETO**, the Releasor and the below representative of Augusta, Georgia set their hand and seal.

Allstate Fire and Casualty Insurance Company

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Edward M. Harris, Attorney for  
Allstate Fire and Casualty Insurance Company

Augusta, Georgia

\_\_\_\_\_  
Witness

\_\_\_\_\_  
David S. Copenhaver, Mayor

Attest:

\_\_\_\_\_  
Lena J. Bonner, Clerk of Commission