

**A. Identification of Parties**

Kennon Dunn will hereafter be referred to as "Releasor." The Releasees are the persons and entities referenced below and any other person or entity who could be named as a defendant as a result of an incident occurring at or near Marshallville City Hall on or about January 28, 2019, ("the Incident"), as more fully set forth in Releasor's "Ante Litem Notice" sent to Releasees dated September 18, 2020, specifically including without limitation:

1. The City of Marshallville and any and all City of Marshallville, Georgia employees, in their individual and official capacities, their executors, administrators, personal representatives, heirs and assigns, agents, attorneys, representatives and/or liability insurers;
2. Marshallville Police Department, and their present or past employees, elected officials, members, or representatives, as well as their officers, directors, in their individual and official capacities, their shareholders, predecessors, affiliates, parents, subsidiaries, related companies, parent companies, administrators, servants, successors, trustees, vendors, subcontractors, independent contractors, volunteers, agents, and attorneys;
3. All of Releasees' liability insurers, including Gallagher Bassett Services, Inc. and the Georgia Interlocal Risk Management Agency, and Releasees' reinsurers, excess insurers, indemnitors, predecessors and successors, attorneys and representatives, whether or not specifically named or referred to, against whom liability may be asserted on behalf of said Releasor for any claim arising out of the Incident or litigation.

**B. Payments**

1. In sole consideration for this general release and other terms of this Release and Compromise Agreement ("Agreement") and the Letter of Commitment, Releasor accepts the following sums, FIFTY FIVE THOUSAND (\$55,000.00) in compromise of his claims against Releasees, the receipt and sufficiency of which is acknowledged.

2. Releasor expressly acknowledges his obligation to comply with Georgia and federal laws regarding the handling and distribution of this payment.

3. As part of the consideration for the payment set out above, Releasor represents and warrants that he will satisfy and release any existing or potential valid and enforceable liens or subrogation claims by any hospital, attorney, health care provider, workers' compensation provider, Medicare, Medicaid or any other government agency or organization resulting from the incident that is the subject of this Agreement. Nothing herein prevents Releasor from disputing or negotiating the validity of any lien. Releasor expressly acknowledges and agrees that Releasees, their insurers, or their counsel shall have no responsibility regarding these existing or potential liens or claims.

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**C. General Release of All Claims by Releasor and No Further Legal Recourse**

Releasor, individually and on behalf of his executors, administrators, survivors, heirs and assigns generally releases those identified as Releasees from all legal and equitable claims of every kind and nature, in tort, contract, statute, breach of warranty and otherwise, including without limitation those known and unknown arising out of, connected in any way to, or leading to any alleged event or events related to the Incident, including all claims asserted by Releasor or that could have been asserted by Releasor against Releasees in any claim or lawsuit arising from the Incident. This release covers all claims vested in the Releasor and specifically includes without limitation all known and unknown past, present and future claims for personal and bodily injury, violation of any civil right granted under any law, the United States Constitution, or the Georgia Constitution, property damage, death, disability, lost income, medical, dental, and drug expenses, and/or mental, emotional conscious pain and suffering, loss of services and consortium, attorneys' fees, punitive damages, and all other claims and damages of every kind, legal or equitable, of every nature, including those damages known or unknown, presently existing that are related to the Incident.

**D. Breach or Violation of Terms**

It is agreed that this Agreement shall be deemed breached and a cause of action accrued thereon immediately upon the commencement of any act, action or conduct contrary to the Agreement, and in any such action this Agreement may be pleaded by any of the Parties, both as a defense and a counterclaim or cross-claim in such action. A breach by Releasor of this Agreement may result in the full repayment of the sum listed in Section B Paragraph 1 back to the Releasees. In the event that any dispute arises with respect to the Agreement, the Party who believes there may be a breach shall contact the other Party in writing setting forth the reason(s) for said belief and shall give the other party ten (10) business days to remedy the matter.

**E. Attorneys' Fees and Court Costs**

Each party hereto shall bear all attorney's fees and costs arising from the actions of their own counsel in connection with the Incident referred to in Section A, this Agreement and the matters and documents referred to herein, and all related matters, except as provided herein. This Agreement includes the release of all claims against the released parties to recover court costs, expenses, attorney's fees, etc. and claims for bad faith and abusive litigation.

**F. No Admission of Liability/Compromise of Doubtful Claims**

The Releasees expressly deny all liability for everything, and this Agreement must not be construed as an admission of liability by any Releasee. This is a compromise settlement of disputed claims made solely to end the cost and uncertainty of litigation and to allow the Releasees to buy their peace. This settlement is in compromise of doubtful and disputed claims

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both as to the questions of liability and as to the nature and extent of injuries and damages. The consideration set forth above constitutes and is received and accepted to compromise and resolve all claims and causes of action and to avoid further risk and expense of litigation.

### **G. Warranties**

As part of the consideration for the payment set out above, Releasor warrants and represents as follows:

1. That no other person or other than the Releasor has, or has had, any interest in these claims except as otherwise stated and Releasor has the sole right to execute this Agreement and receive the sum specified in it.
2. Releasor, in accord with this release, agrees that any and all applicable medical and other liens or subrogation claims related to this Incident are to be paid out of the settlement proceeds. The Releasor agrees to hold the settlement funds until such time as all valid and enforceable existing or potential liens and/or subrogation claims have been satisfied and released. This provision is not an admission by the Releasor and the named Releasees that the existing or potential liens or subrogation claims are valid and enforceable, and the validity of the existing or potential liens or subrogation claims may be contested.
3. This settlement is meant to give consideration to Medicare's interest pursuant to the Medicare Secondary Payor Act and Releasor understands and acknowledges that it is his responsibility to properly consider Medicare's interests. Releasor warrants that he currently anticipates no additional medical treatments as a result of the Incident, and that there is no need to establish a Medicare Set Aside Allocation. In the event that any of the above information provided by Releasor is false or in any way incorrect, Releasor shall be solely liable for any and all actions, causes of actions, penalties, claims, costs, services, compensation or the like resulting from these inaccuracies. Releasor acknowledges that Medicare may require them to exhaust the entire settlement proceeds on Medicare covered expenses. Releasor waives any claims for damages, including a private cause of action provided in the MSP, 42 U.S.C. § 1395y(b)(3)(A), should Medicare deny coverage for any reason, including the failure to establish a set aside allocation to protect Medicare's interest;
4. That the Releasor is over the age of 18 and are not laboring under any disability or impairment that prevents them from understanding this agreement, executing this agreement and releasing these claims.

### **H. Tax Liability**

It is understood between the parties that the Releasor has not relied upon any representation, express or implied, made by the Releasees or any of their representatives as to the tax consequences of this Agreement and that the Releasor releases the Releasees from any and all

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liability in connection with any such tax consequences. The Parties further agree that the settlement funds being paid and set forth herein constitute damages on account of personal injuries and sickness, including emotional distress and mental anguish, arising and originating from a personal physical injury within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended, and do not include any sums of money in compensation for past or future lost earnings and/or future loss of earning capacity, and do not include any amount for punitive damages, although all of the foregoing claims are released and discharged by the Releasor herein.

**I. Mutual Non-Disparagement**

The Releasor and Releasees mutually agree to forbear from making, causing to be made, publishing, ratifying or endorsing any and all false and defamatory statements regarding the other party.

**J. Governing Law**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Georgia.

**K. Interpretation**

It is agreed between the parties that the Agreement was jointly negotiated and jointly drafted by the parties and / or their respective attorneys, and any uncertainty or ambiguity existing herein shall not be interpreted or construed against any party on the ground that said party drafted the Agreement.

**L. Severability**

The provisions of this Agreement are severable, and should any provision for any reason be unenforceable, the balance shall nonetheless be of full force and effect.

**M. Entire Agreement and Successors in Interest**

This writing contains the entire agreement between the Releasees and Releasor. Releasor has not relied upon any representations by the Releasees or their counsel, insurance carriers, or other representatives in entering into this compromise settlement. The terms of this Agreement are contractual and not mere recitals. This Agreement constitutes a complete accord and satisfaction of all claims Releasor may have against every party released, and it is binding upon and inures to the benefit of Releasor's executors, administrators, personal representatives, heirs and assigns.

**N. Voluntary and Informed Execution**

Releasor acknowledges and certifies that he has been advised to consult with an attorney(s)

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before executing this Agreement. The Releasor further acknowledges and certifies that he has

been fully advised of their rights and responsibilities under this Agreement, and that THE RELEASOR HAS READ, KNOW AND UNDERSTAND COMPLETELY THE CONTENTS OF THIS AGREEMENT AND THAT THEY HAVE VOLUNTARILY EXECUTED THE SAME.

**O. Prior Consent of Releasees**

Pursuant to O.C.G.A. §33-7-12, the insurer or insurers of the named Releasees hereby give prior and advance written notice to the Releasor of the lack of consent of their insureds to this settlement and of the fact that their insureds (some or all of the named Releasees) are not precluded from the further assertion of claims against the Releasor.


WITNESS my hand and seal this 25 day of 08, 2021.

  
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(SEAL)

County of Houston

I, Chelle Tigner, a notary public for this county and state, certify that Kennan Dunn whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand this 25<sup>th</sup> day of August, 2021.

  
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Notary Public  
My Commission Expires: Dec 8, 2024

