

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made and entered into this ____ day of January 2017, by and between City of Pompano Beach, Florida, and East Pompano Beach Community Redevelopment Agency (collectively, "CITY"), and Michael Swerdlow, Swerdlow Lightspeed Management Company, LLC, n/k/a Lightspeed Management Company, LLC, International Swimming Hall of Fame, and Swerdlow Lightspeed Management Co. LLC/International Swimming Hall of Fame, Inc. Joint venture (collectively "SWERDLOW") (collectively, the "Parties").

WHEREAS, the Parties desire to resolve SWERDLOW's claim for attorneys' fees and costs in the case styled *City of Pompano Beach, Florida, and East Pompano Beach Community Redevelopment Agency v. Michael Swerdlow, Swerdlow Lightspeed Management Company, LLC, n/k/a Lightspeed Management Company, LLC, International Swimming Hall of Fame, and Swerdlow Lightspeed Management Co. LLC/International Swimming Hall of Fame, Inc. Joint venture*, Case No. 10-19437 (21), currently pending in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida (the "Action"), and all potential claims on the terms set forth herein;

WHEREAS, after summary final judgment was entered in this Action, and affirmed on appeal, SWERDLOW filed a Motion for Attorneys' Fees and Costs, which was opposed by the CITY;

WHEREAS, pursuant counsel for SWERDLOW, the claim for attorneys' fees amounts to approximately \$410,000.00;

WHEREAS, the Parties agree to settle the attorneys' fees and cost dispute for purely business reasons, including their desire to avoid any further litigation expense. The Parties' willingness to enter into the Settlement Agreement is not intended to constitute (nor should it be construed as) an admission by the Parties of any liability or wrongdoing whatsoever;

NOW, THEREFORE, in consideration of the promises and the benefits to be derived from the mutual observance of the covenants and releases contained herein, the Parties agree as follows:

Settlement Terms

1. **RECITATION:** The above recitations and representations are hereby acknowledged and accepted by the Parties as true and accurate and material to their respective covenants, promises and agreements set forth below.

2. **CONSIDERATION:** The undersigned Parties hereby expressly acknowledge the receipt and sufficiency of good and valuable consideration in full satisfaction of the terms, obligations and conditions and covenants stated herein and further acknowledge that there is no understanding or agreement of any kind for any further or future consideration whatsoever, either implied and/or expected.

3. PAYMENT OF CONSIDERATION: Subject to official approval by the City Commission on January 10, 2017, CITY agrees to transfer or otherwise pay the total sum of \$225,000.00 in full settlement of any all claims asserted by SWERDLOW. CITY will use its best efforts to make payment by January 13, 2017, but such payment shall not be later than January 16, 2017.

4. SWERDLOW'S RELEASE: SWERDLOW, its affiliates, successors, predecessors, parents, subsidiaries, officers, agents, assigns, employees, attorneys and legal representatives, for and in consideration of good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, do hereby forever discharge and fully, generally and unconditionally release CITY, its affiliates, successors, predecessors, parents, subsidiaries, officers, agents, assigns, employees, attorneys and legal representatives, from any and all liability now accrued or hereafter to accrue on account of any and all claims, defenses, damages, costs, expenses, attorneys' fees, demands, and/or causes of action against CITY, which SWERDLOW asserted or could have asserted in the Action and/or which arise out of or relate to the transactions which are referenced in the pleadings filed in the Action.

5. CITY'S RELEASE: CITY, its affiliates, successors, predecessors, parents, subsidiaries, officers, agents, assigns, employees, attorneys and legal representatives, for and in consideration of good and valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, do hereby forever discharge and fully, generally and unconditionally release SWERDLOW, its affiliates, successors, predecessors, parents, subsidiaries, officers, agents, assigns, employees, attorneys and legal representatives, from any and all liability now accrued or hereafter to accrue on account of any and all claims, defenses, counterclaims, damages, costs, expenses, attorneys' fees, demands, and/or causes of action against SWERDLOW, which CITY asserted or could have asserted in the Action and/or which arise out of or relate to the transactions which are referenced in the pleadings filed in the Action.

6. ADVICE OF COUNSEL: In entering into this Settlement Agreement, each of the Parties has had the benefit and advice of its own counsel and, as a result of such advice, understands and fully appreciates that it is making a full and final settlement of all claims that it did assert, or could have asserted, in the Action.

7. ENFORCEMENT: The Parties hereby acknowledge that in the event either party takes any action in contravention of this Settlement Agreement, the other party may incur attorneys' fees and costs in bringing legal action to enforce the terms of this Settlement Agreement. In any such action, the prevailing party shall be entitled to recover his or her legal fees and costs, including attorneys' fees and costs.

8. WITHDRAWAL OF CLAIM FOR ATTORNEYS' FEES AND COSTS: SWERDLOW agrees to file a notice with the court withdrawing his Motion for Attorneys' Fees and Costs immediately upon execution of this Settlement Agreement.

9. ENTIRE AGREEMENT: This Settlement Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. It supersedes all prior negotiations, letters and understandings relating to the subject matter hereof.

10. AMENDMENT: This Settlement Agreement may not be amended, supplemented or modified in whole or in part except by an instrument in writing signed by the party or parties against whom enforcement of any such amendment, supplement or modification is sought.

11. CHOICE OF LAW: This Settlement Agreement will be interpreted, construed and enforced in accordance with the laws of the State of Florida.

12. HEADINGS: The section and subsection headings in this Settlement Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Settlement Agreement.

13. CONSTRUCTION: The Parties and their respective legal counsel participated in the preparation of this Settlement Agreement; therefore, this Settlement Agreement shall be construed neither against nor in favor of any of the Parties, but rather in accordance with the fair meaning thereof.

14. BINDING NATURE: This Settlement Agreement will be binding upon and will inure to the benefit of any successor or successors of the Parties.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

"CITY":

Witnesses:

CITY OF POMPANO BEACH

By: _____
LAMAR FISHER, MAYOR

By: _____
DENNIS W. BEACH, CITY MANAGER

Attest:

ASCELETA HAMMOND
CITY CLERK

(SEAL)

Approved As To Form:

MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instruments were acknowledged before me this _____ day of _____, 2017 by **LAMAR FISHER** as Mayor, **DENNIS W. BEACH** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

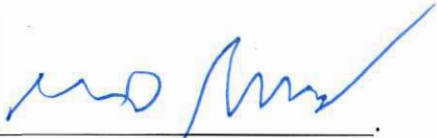
NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

"SWERDLOW":

By: 
MICHAEL SWERDLOW for
Michael Swerdlow (individually), Swerdlow
Lightspeed Management Company, LLC, n/k/a
Lightspeed Management Company, LLC,
International Swimming Hall of Fame, and
Swerdlow Lightspeed Management Co.
LLC/International Swimming Hall of Fame, Inc.
Joint venture

Date:

NOTARIAL CERTIFICATE

STATE OF FLORIDA)
)ss
COUNTY OF Dade)

The forgoing Settlement Agreement and Release was acknowledged before me this 22nd
day of December 2016 by Michael Swerdlow, who is personally known to me or who
produced Drivers license - as identification and who did take an oath.



NOTARY PUBLIC
STATE OF FLORIDA

