

SETTLEMENT AND RELEASE AGREEMENT

THIS SETTLEMENT and RELEASE AGREEMENT (the "Agreement") is made this ___ day of April, 2011 by and between **TAU EPSILON PHI FRATERNITY, INC.** ("TEP"), **JOSEPH MARCHAND**, the Chapter 7 Trustee for TEP (the "Trustee"); **GEORGE HASENBERG, CLINTON HASENBERG, GLENN S. LINDER, LOUIS DEGAN, BRIAN BARRICK, MARK L. KAY and TED BRADPIECE** (the "Directors and Officers"); and **NATHANIAL BROUGHTY**, individually and in his representative capacity as the named party on behalf of those individuals identified as the plaintiffs in the New York Action and the movants in the Bankruptcy Action ("Broughty"), all c/o **GRABER MEDINA LLC.** (TEP, the Trustee, the Directors and Officers, and Broughty are hereafter referred to collectively as the "Settling Parties").

WHEREAS, on or about January 24, 2011, TEP filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the District of New Jersey under Case No. 11-11844-GMB (the "Bankruptcy Action"); and

WHEREAS, on or about January 24, 2011, Joseph Marchand was appointed as the Chapter 7 Trustee for TEP (the "Trustee"); and

WHEREAS, on or about September 1, 2010, Broughty commenced litigation in the Supreme Court of the State of New York, entitled Nathaniel Broughty, et al. v. George Hassenberg, et al., Index No. 651430/10 (the "New York Action"), alleging claims against the Directors and Officers and seeking the appointment of a Receiver. On January 18, 2011, an Order was entered in the New York Action appointing Robert Abrams as Receiver with certain limited powers; and

WHEREAS, as a result of the filing of the Bankruptcy Action and the imposition of the automatic stay pursuant to the provisions of 11 U.S.C. §362, the New York Action was stayed and the Receiver has taken no action; and

WHEREAS, on February 28, 2011, Broughty filed a motion to dismiss the Bankruptcy Action and on March 28, 2011, a hearing was held before the Honorable Gloria M. Burns, U.S.B.J. and the hearing was further carried with the consent of all parties to April 28, 2011; and

WHEREAS, the Settling Parties have, in preparation for the hearing scheduled for April 28, 2011, subpoenaed various parties for depositions; and

WHEREAS, the Settling Parties have negotiated an amicable resolution of all disputes between them including, but not limited to, those arising in the New York Action and in the Bankruptcy Action. It is intended that upon entry of a Final Order approving the within settlement (the "Approval and Dismissal Order"), the Settling Parties shall jointly apply to the New York Court having jurisdiction over the New York Action for entry in the New York Action of this Stipulation of Settlement seeking, among

other things, dismissal with prejudice of all claims by the Plaintiffs therein against the Directors and Officers in accordance with the terms of this Settlement Agreement.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the Settling Parties, intending to be legally bound and to bind their successors and assigns by and to this Agreement, agree as follows:

1. The within settlement shall, upon entry of an Order, in the form as annexed hereto as **EXHIBIT A**, approving this settlement and dismissing the Chapter 7 Bankruptcy Case of TEP and immediately remitting the entirety of this matter to the New York Supreme Court, New York County (the "Approval and Dismissal Order"), be effective and binding upon the parties to this Settlement, their successors and assigns. For purposes of this Agreement, the date that the Approval and Dismissal Order becomes final shall be deemed the Effective Date. Notice of Motion seeking Court approval of this settlement is to be served upon the Trustee and all scheduled creditors in the Bankruptcy Action by Greenbaum, Rowe, Smith & Davis LLP; and upon all parties in the New York Action and the Receiver appointed in the New York Action by Graber Medina LLC. Certifications of Service shall be filed with the Clerk of the Bankruptcy Court. It is intended that this settlement result in a complete and final resolution of all disputes between the Settling Parties concerning TEP, including the ongoing litigation and all derogatory or defamatory comments made on the internet, in the press and otherwise, by and among the Settling Parties against each other.

2. Within three (3) days of the entry of the Approval and Dismissal Order and as a condition thereof, Broughty shall pay to the Trustee such monies as shall be required by the Trustee to satisfy the Trustee's reasonable fees and commissions as approved by the Court and to pay for adequate general liability insurance premiums for TEP for a period of no less than ninety (90) days. All liabilities declared in the Bankruptcy Schedule, except for those which are specifically excluded by this agreement, shall be assumed by the new entity to pay or dispute in the ordinary course of business except for those liabilities which have been liquidated in judgment form against TEP, which shall be paid. The Officers and Directors warrant that no such judgments exist. Upon his receipt of such funds, the Trustee shall consent to the dismissal of the Chapter 7 and shall advise the Settling Parties of his receipt thereof and shall hold and retain such funds in escrow for the purposes as intended and disburse such funds only pursuant to an order of this Court and only in accordance with the foregoing instructions. Any balance shall be remitted to TEP to be administered by the Interim Board. Should the full terms of this settlement not be implemented for whatever reason, the Trustee agrees to immediately return all monies to Broughty. The Trustee shall turn over all books, records and assets, whether tangible or intangible, to Broughty and conclude his service as Trustee for TEP except as required to effectuate dismissal of this Bankruptcy.

3. Upon the Effective Date and satisfaction of the provisions of paragraph 2 above, the Trustee shall release the Directors and Officers and Broughty from any and all claims owned or belonging to him as Trustee of TEP contingent upon and subject to the limitations as set forth in paragraph 7 below upon said release in this Agreement;

and the Directors and Officers and Broughty release the Trustee from any and all claims arising from this matter. Said releases shall be effective as of the Effective Date but shall be explicitly contingent upon implementation of the terms of this Agreement.

4. Broughty, TEP, and the Directors and Officers release and agree to hold each other harmless from any and all claims which one has against the other including, but not limited to, claims which were or which could have been filed in the New York Action or arising from or in any way related to the management of TEP and the performance of the duties of the Directors and Officers as directors, officers or employees of TEP, subject to the limitations as set forth in paragraph 7 hereafter upon said release in this Agreement and excluding any claims belonging to or inuring to the benefit of Tau Epsilon Phi Foundation, Inc. In this regard, the Directors and Officers represent and warrant that, to the best of their knowledge and belief, and upon reasonable investigation, they have properly managed the affairs of TEP during their tenure and been materially truthful in their statements to both the New York and Bankruptcy Courts. The Directors and Officers have no claims against TEP and are not due any monies, wages or benefits whatsoever from TEP except as provided in paragraph 7 below. The Directors and Officers, in their individual capacity, hereby release TEP to the maximum extent permitted by law from any and all manner of claims, demands, causes of action, obligations, damages, or liabilities whatsoever of every kind and nature, at law or in equity, known or unknown, and whether or not discoverable, which they have or may have had, including, but not limited to, any claim of wrongful discharge, breach of contract, claims for unpaid wages and claims of discrimination under the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, as amended, and all other federal, state and local laws, including but not limited to claims arising under State or Federal Labor Law, and any claim for attorneys' fees or costs incurred in pursuing or defending this or any other legal claim. This is intended to be a full, complete and general release except to the extent the assurances in this Agreement are false. Broughty represents and warrants that neither he, individually, nor any of the persons for whom he serves as a named party, have assigned their claims to any third parties; nor will he or they directly or indirectly seek to pursue any released claims against the Directors and Officers in any way; it being intended that this Settlement Agreement bring finality to these disputes. These releases shall be in effect as of the Effective Date.

5. The Directors and Officers, through counsel, shall within one business day of agreement by the Settling Parties to the form of this Agreement, file a motion in the Bankruptcy Court seeking approval of this Settlement Agreement and dismissal of the Chapter 7 on short notice, or as the Court may direct, including the entry of an Order permitting the Notice of the Settlement and Dismissal to be published by Marchand on TEP's website and to serve as notice to the TEP membership of the hearing to approve this Settlement. Once said motion is granted all matters shall return to and be handled in the New York Supreme Court, New York County which shall have exclusive jurisdiction over all further matters, including but not limited to the holding of a member election.

6. The Settling Parties represent and warrant that they shall not individually or collectively further defame one another in the press, on the internet, in the social media, or in any other manner. Nothing in this settlement shall be construed to infringe upon any party's First Amendment Free Speech rights, but rather is intended to fully and finally settle any defamation claims which may exist and enjoin future defamation. No action will be taken by Broughty which would interfere with the ability of the Hasenbergs to look to any unemployment insurance policy to collect unemployment payments as former employees of TEP but the Hasenbergs individually, and the Directors and Officers, hereby waive and agree not to seek or collect any payments or benefits of any sort from TEP including but not limited to severance, continuing medical insurance or any other form of compensation or benefit. All Settling Parties recognize that further criticism or derogatory statements are unwarranted and are not in the spirit of this Settlement Agreement.

7. The Officers and Directors represent and warrant that the assets and liabilities of TEP as set forth in the Chapter 7 Petition are materially complete and accurate and that they have not transferred assets to any third party or to any of themselves nor are they aware, after exercising due diligence, of any embezzlement of the funds of TEP or illegal or undisclosed payments to the Directors and Officers or related persons or entities at any time. The Officers and Directors further represent and warrant that no payments or disbursements of any sort were made of TEP funds to any of them personally, or any related person or entity, other than base salary in line with prior years (and specifically excluding any severance, bonus payments or the like) from January 1, 2010 to present. The releases herein are explicitly contingent upon to the truth and accuracy of the foregoing representations and warranties and shall be null void if the same are materially false.

8. Broughty accepts said representations in paragraph 7 and relies upon the same in withdrawing allegations of embezzlement and "looting" of TEP by the Directors and Officers as set forth in the pleadings in the New York Action. Broughty further disavows any and all accusations and postings which impugn the integrity or demean the character of any and all of the Directors and Officers in reliance upon said representations.

9. The Settling Parties agree that the Joint Press Release annexed hereto as **EXHIBIT B** shall be the only press release given to the media in this matter and that no party shall give an interview or comment to the press regarding this matter that is not in the spirit of this Agreement. Broughty shall specifically remove from the public media the YouTube video of the protest at Hasenberg's residence, and any and all other similar YouTube videos identified by the Directors and Officers. To the extent that derogatory blogs or comments are posted on the internet, the Settling Parties shall cooperate with each other and use their best efforts to remove all such blogs or postings; provided that to the extent the postings are archived or otherwise not retrievable, the party wishing to remove the same shall do so at its own expense, if any.

10. The automatic stay is immediately vacated upon the Effective Date to allow the Settling Parties to jointly proceed in the New York Action to enter this settlement in connection with a Stipulation of Dismissal with Prejudice as to those claims which seek monetary damages against the Directors and Officers and for all other purposes. The Directors and Officers further agree not to take any action which would further stay the New York Action and explicitly consent to the waiver of any automatic stay. The Directors and Officers consent to the entry of judgment to permit formulation of an election plan and scheduling and completing the same and agree not to interfere or otherwise seek to stay, delay or otherwise disrupt the elections. . The Directors and Officers agree not take any action of any sort, including any legal action or make any further bankruptcy filing, which would in any way interfere with a member election or any work by the New York Court or appointed Receiver in the New York Action to prepare for, schedule and hold an election of new officers and directors subject, however, to consent by the Receiver to the dismissal with prejudice of the above-stated monetary claims against the Directors and Officers. The Receiver and the New York Attorney General shall be timely notified of this Settlement by Graber Medina LLC.

11. The Directors shall, upon the Effective Date and concurrent with their resignations, appoint an interim Grand Council (Board of Directors) for TEP comprised of the individuals identified in **EXHIBIT C**. The interim Gran Council has been selected by Broughty and the Directors and Officers have not participated in such selection. The interim Grand Council shall act on behalf of TEP in all matters pending an election. Broughty indemnifies and agrees to hold the Trustee harmless from any and all claims, costs and damages which may be alleged against him by virtue of appointment of the interim Grand Council or the management of TEP by the interim Grand Council. Broughty indemnifies and agrees to hold the Directors harmless from any and all claims, costs and damages which may be alleged against them by virtue of their appointment of the interim Grand Council or the management of TEP by the interim Grand Council subject to any limitations in this Agreement.

12. The Directors and Officers have signed this Agreement in their capacity as such and in their individual capacity. The Directors and Officers acknowledge that they have been personally named in the New York Action and understand that they may have conflicts as between themselves and other Directors and Officers or as between themselves and their duties as Directors and Officers of TEP. In that regard, they have consulted with attorneys of their choosing before signing this Agreement, have knowingly waived any and all conflicts of interest which may exist, and agree to be individually bound by this Agreement.

13. Upon the Effective Date, the Directors and Officers shall tender their resignations as Directors and Officers of TEP and agree not to seek reelection at any time nor serve in any capacity as an Officer, Director or in any other position within TEP or on its Grand Council, including without limitation any *ex officio* or other positions they may otherwise have been entitled to hold by virtue of their former status as Directors and/or Officers or members of TEP's Grand Council. The Directors and Officers

hereby forever waive any rights they may have otherwise been entitled to by virtue of having served as Officers and Directors or on TEP's Grand Council[p.

14. The Directors and Officers may remain as members of TEP, in good standing, subject to the provisions of the constitution of TEP and shall be treated as any other member of the fraternity.

15. Neither Broughty nor TEP shall be liable for or assume any legal fees or expenses of counsel to TEP or the Directors and Officers in this or the New York action and such expenses shall not be a liability of Broughty or TEP, including but not limited to any professional fees or expenses incurred in the retention of Greenbaum, Rowe, Smith & Davis LLP; Marks, O'Neill, O'Brien & Courtney, PC; Flaster Greenberg; Muller, Longo & Company LLC or Michael Dailey.

16. This Agreement is binding upon the parties hereto, their successors and assigns.

17. Graber Medina LLC has and shall accept service of any and all Notices of Settlement on behalf of Broughty in his individual and representative capacity as nominee for the Plaintiffs in the New York Action and Movants in the Bankruptcy Action. The signature of Graber Medina LLC to this Settlement Agreement shall be binding upon Broughty, the Movants and Plaintiffs. Graber Medina LLC shall be responsible to provide prompt notice of these proceedings to Broughty, the Movants and Plaintiffs based upon Graber Medina LLC's representation that the firm represents Broughty, the Movants and Plaintiffs. Graber Medina LLC represents and warrants that it represents each and every one of the Movants and Plaintiffs and is authorized to accept service and bind the Movants and Plaintiffs to this Settlement Agreement. A list of the Movants and Plaintiffs is annexed as **EXHIBIT D**.

18. This Settlement Agreement represents the entire agreement between the Settling Parties and may not be altered or modified except in writing and signed by all parties hereto.

19. Jurisdiction as to the interpretation and implementation of this Agreement shall be reserved to the New York Supreme Court, New York County and all parties consent to and agree that exclusive jurisdiction over any and all disputes concerning this Agreement, TEP's governance or any other disputes between the parties, shall be in the New York Supreme Court, New York County.

20. Unless otherwise specified by Court Order, all notices shall be sent in writing by overnight delivery service as follows:

If to the Debtor, the Directors and Officers:

David L. Bruck, Esq.
Greenbaum, Rowe, Smith & Davis LLP

99 Wood Avenue South
Iselin, New Jersey 08830
dbruck@greenbaumlaw.com

If to Broughty, Movants and Plaintiffs:

Daniel Graber, Inc.
Graber Medina LLC
The Chrysler Building
405 Lexington Avenue, 7th Floor
New York, New York 10174
dgraber@graberfirm.com
If to the Chapter 7 Trustee:

Joseph Marchand, Esq.
117-119 West Broad Street
P.O. Box 298
Bridgeton, New Jersey 08302
jdmarchand@comcast.net

SIGNED, SEALED AND DELIVERED as of the date first written above.

GREENBAUM, ROWE, SMITH & DAVIS LLP
Attorneys for the Directors and Officers

By: _____
David L. Bruck, Esq.

GREENBAUM, ROWE, SMITH & DAVIS LLP
Attorneys for Tau Epsilon Phi Fraternity, Inc.

By: _____
David L. Bruck, Esq.

GRABER MEDINA LLC
Attorneys for Nathaniel Broughty, individually and in
his representative capacity as Plaintiff in the New York
Action and the Movants in the Bankruptcy Action

By: _____
Daniel Graber, Esq.

JOSEPH MARCHAND, as Chapter 7 Trustee
of Tau Epsilon Phi Fraternity, Inc.

By: _____
Joseph Marchand, Esq.