

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
Recommendations of Boards, Commissions & Committees (Green)
X Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: Scott Niehaus, Village Manager

DATE: October 5, 2021 (B of T) Date: October 7, 2021

TITLE: Release of Claims
Spear v. Berlin, et al.

BACKGROUND/POLICY IMPLICATIONS:

Attached please find information regarding a proposed general release in the matter of Spear v. Berlin et al. Plaintiff Thomas Spear has agreed to and signed the proposed settlement. Village counsel and staff are recommending approval of the proposed agreement.

Please place this item on the October 7, 2021 Board of Trustees consent agenda.

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X SN _____ Date 10/5/21

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



#210319

MEMORANDUM

TO: Scott Niehaus
Village Manager

FROM: Nicole Aranas
Assistant Village Manager

DATE: October 5, 2021

SUBJECT: Release of Claims – Case No. 19C6027
Spear v. Berlin

Attached please find a copy of a Release of Claims in the matter of Spear v. Berlin, et al. Plaintiff, Thomas Spear, filed a complaint seeking damages against the DuPage County States Attorney, Village of Lisle, and the Village of Lombard in 2019. Parties have agreed to a release of all claims and contribution by the Village of Lombard for \$7,500 towards a total settlement amount of \$40,000.

The release of claims is recommended for approval by Village counsel and staff. Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

RELEASE OF ALL CLAIMS

Thomas John Spear, for and in the consideration of the sum of **\$40,000.00 (Forty Thousand Dollars and Zero Cents)** comprised of **\$17,500.00 (Seventeen Thousand Five Hundred Dollars and Zero Cents)** from **Illinois Risk Management Association for Village of Lisle**, **\$15,000.00 (Fifteen Thousand Dollars and Zero Cents)** from **DuPage County**, and **\$7,500.00 (Seven Thousand Five Hundred Dollars and Zero Cents)** from **Village of Lombard**, does hereby for himself and for all heirs, executors and administrators, successors, and assigns (hereinafter collectively referred to as "Releasors"), release and forever discharge **Village of Lisle, DuPage County, DuPage County State's Attorney, and Village of Lombard** all in the State of Illinois and any and all related persons or entities and all of their agents, servants, heirs, executors and administrators, attorneys including but not limited to **Best, Vanderlaan & Harrington, DuPage County State's Attorney, and Klein, Thorpe & Jenkins** and insurers including but not limited to **Intergovernmental Risk Management Agency, CCMSI** and their successors and assigns, subsidiaries, affiliates and all other persons or organizations, both known and unknown (hereinafter collectively referred to as "Releasees"), from all claims and demands, actions and causes of action, which have arisen or which may arise from or by reason of any and all known and unknown, foreseen or unforeseen, personal and bodily injuries, sickness, disease or death and damage to or destruction of property, and any and all consequential injury and damages which have resulted or may result from the occurrence which took place on or about **September 27th and 28th**, 2017 at or near **Village of Lisle Police Department, 5040 Lincoln Avenue** in **Village of Lisle, State of Illinois and/or Peoria Police Department in Peoria, Illinois** including but not limited to any cause of action or claim that was a part of or could have been a part of the litigation pending in the **United States District Court for the Northern District of Illinois – Eastern Division** under case number **1:19-cv-06027** and titled in whole or in part **THOMAS JOHN SPEAR v. ROBERT B. BERLIN**, in his official capacity as **State's Attorney of DuPage County**; **JAMES ECCARDT**, in his individual capacity; **JAMES ECCARDT**, in his official capacity as **Detective for the Lisle Police Department**; **ROBERT GUERRIERI**, in his individual capacity; **ROBERT GUERRIERI**, in his official capacity as **Investigator for the DuPage County State's Attorney's Office**; **CHRISTOPHER LOUDON**, in his individual capacity; **CHRISTOPHER LOUDON**, in his official capacity as **Detective for the Lisle Police Department**; **MARK LUTZ**, in his individual capacity; **MARK LUTZ**, in his official capacity as **Detective Sergeant for the Lisle Police Department**; **CYNDY VELAZQUEZ**, in her individual capacity; and **VILLAGE OF LISLE, DUPAGE COUNTY, STATE OF ILLINOIS**.

It is further understood and agreed that this settlement is the compromise of a doubtful and disputed claim and that the payments are not to be construed as an admission of liability or any wrongdoing whatsoever on the part of any Defendant or other Releasee hereby released, and that this release and settlement shall not be used by the Releasors or anyone on their behalf against the Releasees as a waiver or estoppel or as a defense in any action which is now pending or may be brought hereafter, whether such action be asserted in a Complaint or by way of Cross-Action, Counterclaim, or set-off.

Releasors agree that they will keep strictly confidential and will not communicate or disclose to any other person, natural or otherwise, except to their lawyer and/or accountants, the Local, State

and Federal taxing authorities, for tax purposes, or as required by law or upon the prior written consent of the other respective parties to this Agreement, the contents of any term or provision contained herein or any other aspect of the settlement and this Agreement between the parties. The Releasors specifically agree not to disclose the terms and provisions of this Agreement to any person other than their attorney(s), accountant(s), state and federal taxing authorities, or as otherwise necessary to effectuate the terms of this Agreement. Releasors specifically agree that this prohibition against disclosure of the terms and provisions of this Agreement applies, but is not limited to, any discussions that Releasors, their attorney(s) and their accountant(s) may have with any past or current employee, agent or representative of Releasees. Upon inquiry by any person about the status of said suit, Releasors shall simply state that the matter has been resolved. Releasors shall make no mention whatsoever of Releasors' receipt of money, or the amount of said money, from Releasees. The Releasors further agree that neither them, nor their representatives, will speak to any representatives of the media regarding Thomas John Spear's case, and, if asked to comment, shall simply state the matter has been resolved. Releasors agree to notify their attorney, accountant or any Local, State or Federal Taxing body to whom they disclose this settlement as to the terms and conditions of this settlement agreement and their requirement to comply with the same.

Releasors specifically agree that they will not voluntarily disclose information regarding the terms of this Agreement or the allegations of Thomas John Spear's Complaint to any agency, court or other entity. Releasors agree to notify Defendants and/or Releasees if they have been served with a subpoena compelling disclosure of this information upon receipt of the subpoena, and prior to disclosing any information.

Releasors further agree that they will not assert, claim or allege, through conversation or otherwise, to any person, that Defendant(s) and/or Releasees committed any of the allegedly wrongful acts attributed to Defendant(s) and/or Releasees by Thomas John Spear in the above-described civil action. As set forth in the paragraph above, absent a valid subpoena, Releasors and Releasors' Attorneys may respond to inquiries made as to the status of the case by stating only that the case has been resolved.

Releasors agree and understand that this settlement is subject to the Releasors' satisfaction of any and all existing and known liens or third party rights of recovery by any claimant on the settlement proceeds. The settlement proceeds shall not be paid to Releasors, in whole or in part, until a release of any such lien or right of recovery is provided to defense counsel for Releasees and/or the claimant(s) are included as payees on any settlement check.

The undersigned agrees that this Release contains the entire agreement between the parties hereto, and that the terms hereof are contractual and not a mere recital.

The undersigned further agrees he/she has consulted with his attorney and signs this Release of All Claims after having received legal counsel regarding the same.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

**THIS IS THE LAST PAGE OF A MULTI-PAGE DOCUMENT THAT AFFECTS YOUR
LEGAL RIGHTS. BY SIGNING BELOW YOU AGREE YOU HAVE READ IT, HAVE
UNDERSTOOD IT, AND HAVE RECEIVED LEGAL COUNSEL REGARDING ITS
CONTENTS AND IMPLICATIONS.**

SIGNED this date of _____.

Thomas John Spear

Social Security Number

Witnessed by:

Printed Name

Signature