

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 19, 2021 (B of T) Date: October 21, 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 final proposed settlement. Village counsel and staff are recommending approval of the proposed agreement.

Please place this item on the October 21, 2021 Board of Trustees consent agenda.

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X UNOUP _____ Date 10/19/2021

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 ~~USA~~
Assistant Village Manager

DATE: October 19, 2021

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

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.

This item was previously placed on the Village Board agenda for October 7 and removed pending revisions to the final language of the document. The document is now final and the revisions made do not change the substance of the agreement. The attached release has been signed by Plaintiff Spear.

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.

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

Releasors and Releasees, defined below, together referred to as “the Parties,” hereby enter into this Settlement Agreement and Release of All Claims (the “Agreement”) to settle and resolve certain disputes upon the terms described herein.

Thomas John Spear (“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** (“Payors”), and the other agreements and obligations described below, 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** (“the Litigation”).

It is further understood and agreed that this settlement is the compromise of a 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. Notwithstanding anything in this paragraph to the contrary, Mr. Spear may use this agreement to enforce the obligations of Releasees.

The Parties 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, their local governmental authority to obtain approval of the Agreement, or as required by law (including in response to requests under the Freedom of Information Act) 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 Parties 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 or enforce the terms of this Agreement. Upon inquiry by any person about the status of said suit, the Parties shall make no mention whatsoever of any payment or receipt of money, or the amount of said money, under this Agreement. The Parties further agree that neither them, nor their representatives, will speak to any representatives of the media regarding the terms of this Agreement. The Parties agree to notify their attorney and accountant to whom they disclose this Agreement as to the terms and conditions of this settlement agreement and their requirement to comply with the same.

The Parties specifically agree that they will not voluntarily disclose information regarding the terms of this Agreement to any agency, court or other entity except as provided herein. The Parties agree to notify all other named parties in the Litigation if they have been served with a subpoena or other request compelling disclosure of this information upon receipt of the subpoena or request, and prior to disclosing any information. This obligation of notification will be discharged by forwarding the subpoena to the counsel of record in the Litigation at the email addresses the attorneys for the named parties in the Litigation have as of the Effective Date of this Agreement.

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. Releasors are aware of no such liens.

Releasors and Releasees agree that this Agreement is a release of all claims set forth above, but that the settlement proceeds are allocated wholly to the personal physical injury claims asserted by Mr. Spear in the Litigation which are non-taxable pursuant to Section 104(a)(2) of the Internal Revenue Code of 1986, as amended (the "Code") and from which no information return or other reporting requirement is required under the Code. Nothing in this Agreement shall be construed as any party providing tax advice to any other party.

Payors agree to pay the settlement proceeds to Mr. Spear in full within 10 business days of Spear providing a signed copy of this settlement agreement to Releasees' counsel of record. The check(s) shall be made payable to Thomas John Spear and shall be delivered to P. Russell Perdew, Locke Lord LLP, 111 South Wacker Drive, Chicago, Illinois, 60606. Upon receipt of the settlement

proceeds in full, Spear shall file documentation sufficient to dismiss the Litigation with prejudice, with each party to bear their own costs.

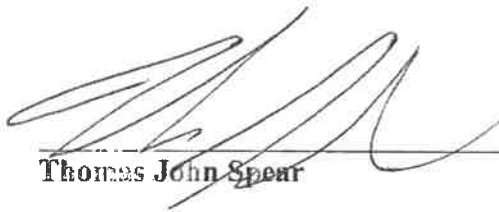
The Parties agree that this Agreement contains the entire agreement between the parties hereto, and that the terms hereof are contractual and not a mere recital.

The Parties agree that this Agreement may be executed in counterparts and each counterpart shall constitute an original execution of this Agreement. The transmission of a counterpart by way of facsimile, or a .pdf scan sent via electronic mail, shall constitute an original execution of this Agreement.

The Parties further agree they have consulted with their attorney(s) and sign this Settlement and Release of All Claims after having received legal counsel regarding the same.

The Defendants signing below in their individual capacity (Eccardt, Guerrieri, Loudon, Lutz, and Velazquez) are joining this agreement in that capacity solely as to the confidentiality provision of this agreement.

SIGNED this date of October 17th, 2021.

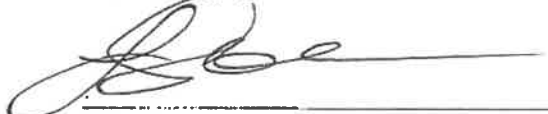


Thomas John Spear

Witnessed by:

LOREY SAUNDERS

Printed Name



Signature

SIGNED this date of _____.

Printed Name and Title

JAMES ECCARDT in his individual capacity

Witnessed by:

Printed Name and Title

Signature

SIGNED this date of _____.

Printed Name and Title

ROBERT GUERRIERI in his individual capacity

Witnessed by:

Printed Name and Title

Signature

SIGNED this date of _____.

Printed Name and Title

CHRISTOPHER LOUDON in his individual capacity

Witnessed by:

Printed Name and Title

Signature

SIGNED this date of _____.

Printed Name and Title

MARK LUTZ in his individual capacity

Witnessed by:

Printed Name and Title

Signature

SIGNED this date of _____.

Printed Name and Title

CYNDY VELAZQUEZ in her individual capacity

Witnessed by:

Printed Name and Title

Signature

SIGNED this date of _____.

Printed Name and Title

On behalf of **VILLAGE OF LISLE, DUPAGE COUNTY, STATE OF ILLINOIS**

Witnessed by:

Printed Name and Title

Signature

SIGNED this date of _____.

Printed Name and Title

On behalf of **VILLAGE OF LOMBARD, DUPAGE COUNTY, STATE OF ILLINOIS**

Witnessed by:

Printed Name and Title

Signature