

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: June 12, 2024 (B of T) Date: June 20, 2024
TITLE: General Release and Settlement of All Claims
Joseph James v. Village of Lombard

BACKGROUND/POLICY IMPLICATIONS:

Attached please find information regarding a proposed general release and settlement agreement in the matter of James v. Village of Lombard. Plaintiff Joseph James has agreed to the proposed settlement. Village counsel and staff are recommending approval of the proposed agreement.

Please place this item on the June 20, 2024 Board of Trustees consent agenda.

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X Scott Niehaus _____ Date 6/12/24

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.



#240210

MEMORANDUM

TO: Scott Niehaus
Village Manager

FROM: Nicole Aranas *NA*
Deputy Village Manager

DATE: June 12, 2024

SUBJECT: Settlement Agreement and General Release – Case No. 2015L000950
Joseph James v. Village of Lombard

Attached please find a copy of a Settlement Agreement and General Release in the matter of Joseph James v. Village of Lombard. Plaintiff, Joseph James, filed a complaint seeking damages against the Village of Lombard in 2015. Parties have agreed to a proposed settlement amount of \$850,000 and language of a general release towards resolution of the claim.

The proposed settlement agreement and release are recommended for approval by Village counsel and the Village liability insurance carrier. The settlement has been reached in connection with, and will be paid by, the general liability insurance carrier for the Village.

Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
COUNTY OF DUPAGE, LAW DIVISION**

JOSEPH JAMES,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2015 L 000950
)	
VILLAGE OF LOMBARD, a municipal corp.)	
DIETERICH HERNDOBLER, and TIMOTHY)	
HILLESHEIM,)	
)	
Defendants.)	

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (“Agreement”) is made and entered into this __ day of April, 2024, by and between the following parties: Joseph James (“Plaintiff”), and Village of Lombard (“Village”), and Dieterich Herndobler and Timothy Hillesheim (“Individual Defendants”) (collectively, “Defendants”). The Plaintiff and Defendants shall sometimes be referred to collectively as the “Parties.”

PREAMBLE

WHEREAS, Plaintiff filed a Second Amended Complaint at Law (“Complaint”) against Defendants and said case presently is pending in the Circuit Court of the Eighteenth Judicial Circuit, County of DuPage, Law Division, Case No. 2015 L 000950 (the “Lawsuit”); and

WHEREAS, Plaintiff alleges that the Individual Defendants negligently provided emergency medical services by failing to administer the correct dosage or concentration of epinephrine when treating Plaintiff on November 12, 2014, that caused him to sustain injuries of a personal and pecuniary nature, as set forth more particularly in the pleadings in the Lawsuit, claims which Defendants deny as having any merit; and

WHEREAS, it is now the desire of Plaintiff and Defendants to fully and finally resolve and settle the Lawsuit, their respective claims, which exist between them and any and all other claims or matters which may exist or arguably existed between them, as of the date of this Agreement, and enter into a full and final compromise, settlement and mutual release.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged:

1. Incorporation of the Preamble. Each of the introductory statements contained in the preamble hereto are incorporated into Section 1 of this Agreement as material terms and provisions agreed to by Plaintiff and Defendants.

2. Compromise and Settlement. This Agreement constitutes the compromise and settlement of disputed claims that is made to avoid the further costs and uncertainty of litigation. Nothing contained herein, nor any actions taken by Plaintiff or Defendants in connection herewith, shall constitute, be construed as or be deemed to be, an admission of fault, liability or wrongdoing whatsoever on the part of any party.

3. Settlement of All Claims. Plaintiff and Defendants intend this Agreement to be a complete and total resolution and settlement of any and all claims of any kind, whether asserted or not asserted, known or unknown, that Plaintiff may have against the Village and/or Individual Defendants up to, and including the date of this Agreement.

4. Dismissal of the Lawsuit. Plaintiff agrees that once this Agreement is fully executed by Plaintiff, the Village and the Individual Defendants, he will dismiss with prejudice his Lawsuit against Defendants in its entirety.

5. Settlement Terms. In return for Plaintiff's dismissal of all his claims and his lawsuit against Defendants in its entirety, the Parties agree as follows:

- a. The Village will pay Plaintiff a sum of \$850,000.00, inclusive of all Plaintiff's attorney fees and litigation costs and expenses incurred by Plaintiff or his attorneys relative to the Lawsuit.
- b. As part of this Agreement, Plaintiff and Defendants agree they each will be responsible for the payment of their own respective attorneys' fees and litigation costs.

7. General Release and Covenant Not To Sue. Plaintiff, on behalf of himself and his heirs, executors, administrators, successors and assigns, for and in consideration of the payment set forth herein, irrevocably and unconditionally releases and forever discharges and acquits the Village and the Individual Defendants from any and all claims, charges, liabilities, debts, demands, grievances and causes of action of whatsoever kind, whether at law or in equity, whether accrued, contingent or inchoate, and whether known or unknown, suspected or unsuspected, or otherwise which Plaintiff has, had or may have at any time in the future against the Village and/or the Individual Defendants arising from or relating to acts or omissions up to and including the date of the incident, or involving the future or continuing effects of any acts or omissions which occurred up to and including the date of the incident.

The claims released and waived by this Agreement include, but are not limited to, claims relating to or arising out of the allegations and claims set forth in the pleadings in the Lawsuit, claims for pain and suffering, mental and emotional distress, and monetary damages, or other claims under any federal, state or local constitution, statute, regulation, order, common law or other authority having the force of law.

Plaintiff acknowledges and agrees that the nature, materiality, extent and results of the claims compromised and released by this Agreement may not now all be known or anticipated by

him. However, it is the intention of the parties hereto that this Agreement shall be effective as a bar to each and every claim, charge, liability, and/or cause of action that the Plaintiff may have against the Village and its respective personal representatives, employees, agents, insurers, attorneys, executors, administrators, heirs, successors and assigns., and against the Individual Defendants, and their heirs, executors, administrators, successors and assigns. Plaintiff further acknowledges and agrees that he may hereafter discover facts different from or in addition to those now known, suspected or believed to be true with respect to such claims, demands or causes of action and agrees that this release will be and remain effective in all respects notwithstanding any such different or additional facts now and at any time in the future.

Plaintiff further covenants and agrees not to sue, to file a charge, to make a claim or demand, to commence or maintain, or to assist or otherwise participate (except, as required by law, to give testimony), in any action or proceeding of any kind in any court, before any government agency or in any other forum or to accept any money, benefit, or other relief from any proceeding, which would be precluded by this release, whether brought directly by Plaintiff or brought by any other person, agency or entity which would provide relief or benefit to Plaintiff, and agrees to indemnify the Village and/or the Individual Defendants against all liability, costs and expenses and attorney's fees in the event Plaintiff breaches this release and covenant not to sue. Plaintiff also assigns to the Village and/or the Individual Defendants all his rights, titles, and interests in any relief from any proceeding that would be precluded by this release.

8. Plaintiff's Responsibility for Liens: Hold Harmless Obligation. Plaintiff agrees to assume responsibility for all outstanding liens of any kind, those known and unknown, including, but not limited to – medical liens, tax liens, real property liens, Medicare/Medicaid liens and attorney liens – from the proceeds of this settlement. To the extent that any person seeks to enforce

any liens against the Village and/or the Individual Defendants, or anyone associated with the Village and/or the Individual Defendants, Plaintiff agrees to hold harmless the Village and/or the Individual Defendants or anyone associated with the Village, and its past, current and future elected and appointed officials, President and Trustees, officers, employees, attorneys, agents, volunteers, successors, executors, legal and/or personal representatives of any kind, insurers and assigns (hereinafter referred to as "Village Affiliates") and anyone associated with the Individual Defendants, including their heirs, executors, administrators, successors and assigns.

9. No Attorneys' Fees. Plaintiff waives his right, if any, to attorneys' fees. The Village will pay all expenses incurred by itself and the Individual Defendants, and Plaintiff will bear all his incurred expenses for the Lawsuit and in the negotiation and preparation of this Agreement.

10. Choice of Law; Savings Provision. This Agreement will be governed by Illinois law. If any provisions of this Agreement shall be invalidated or refused enforcement by any court of competent jurisdiction, the provisions not invalidated or refused enforcement shall remain in full force and effect.

11. Entire Agreement. This Agreement represents the entire agreement between Plaintiff and Defendants with respect to the matters set forth herein and supersedes all prior agreements or understandings, if any, between the Parties. Plaintiff acknowledges that except for the explicit provisions of this Agreement, no promises or representations of any kind have been made to him by Defendants or their attorneys, to induce him to enter into this Agreement. No modification of this Agreement can be made except in writing and signed by Plaintiff and an authorized representative of the Village and the Individual Defendants.

12. For Settlement Only. This Agreement is entered into for settlement purposes only

and represents the compromise of disputed claims, actual or potential, which Plaintiff has or may believe he has against the Village and/or the Individual Defendants. Neither this Agreement, the decision to enter into this Agreement, nor anything done pursuant to this Agreement, **shall be construed to be an admission or evidence of any wrongdoing or liability by Plaintiff or the Village, its respective personal representatives, employees, agents, insurers, attorneys, executors, administrators, heirs, successors and assigns, or the Individual Defendants and their heirs, executors, administrators, successors and assigns, with such wrongdoing and liability being expressly denied.** Nor will this Agreement, its existence or its terms, be admissible in any proceeding other than a proceeding to enforce the terms of this Agreement.

13. Representations & Warranties By All Parties. All of the Parties represent and warrant that (a) they have the capacity, full power and authority to enter into this Agreement; (b) the individuals signing on behalf of the Village are authorized to do so; (c) they have not assigned, encumbered or in any manner transferred all or any portion of the claims covered by this Agreement; (d) there are not other charges, complaints, suits, arbitrations or other claims or proceedings pending between the Parties in any court, before any agency, or in any forum; and (e) no other person or party has any right, title or interest in any of the claims covered by this Agreement.

14. Successors & Assigns. This Agreement shall be binding upon and inure to the benefit of Plaintiff and the Village and the Individual Defendants, and their respective personal representatives, employees, agents, insurers, attorneys, executors, administrators, heirs, successors and assigns.

15. Knowing and Voluntary Signing of Binding Contract. Plaintiff represents and warrants that he has read this Agreement and understands all of its terms and executes this

Agreement voluntarily and without duress or undue influence, and with full knowledge of its significance, intending to be legally bound. Plaintiff acknowledges that by signing this Agreement, he is GIVING UP ALL CLAIMS AGAINST THE VILLAGE AND/OR THE INDIVIDUAL DEFENDANTS WITH REGARD TO THE ALLEGATIONS CONTAINED IN THE LAWSUIT.

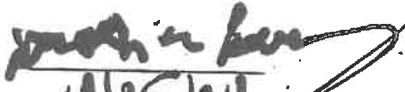
16. Opportunity To Consult Advisors. Plaintiff and Defendants have had reasonable opportunity to consult with attorneys or other advisors of their own choosing before executing this Agreement.

17. Counterparts. This Agreement may be executed in counterparts, each of which may be signed separately and may be enforceable as an original, but all of which together shall constitute but one agreement.

18. Confidentiality. Plaintiff agrees that the terms of this Agreement are strictly confidential, unless disclosure is required by law or otherwise authorized, and therefore, agrees that from the date of presentment of this Agreement to him, and in the future, he shall not disclose, permit, or cause the disclosure of, this Agreement. The Parties acknowledge that this Agreement must be approved at an open meeting of the Village and is subject to disclosure pursuant to the Illinois Freedom of Information Act.

IN WITNESS WHEREOF, the Parties have executed this Agreement by affixing their signatures and the date of execution as indicated below.

JOSEPH JAMES


Dated: 4/25/24

VILLAGE OF LOMBARD

Dated: _____

DIETERICH HERNDÖBLER

Dated: _____

TIMOTHY HILLESHEIM

Dated: _____