

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 7, 2017 (B of T) Date: June 15, 2017

TITLE: Settlement Agreement and General Release
Mary Ellen Mills v. Village of Lombard

BACKGROUND/POLICY IMPLICATIONS:

Attached please find information regarding a proposed settlement agreement and general release in the matter of Mills v. Village of Lombard. Plaintiff Mary Ellen Mills 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 June 15, 2017 Board of Trustees consent agenda.

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X _____ Date _____

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.



#170263

MEMORANDUM

TO: Scott Niehaus
Village Manager

FROM: Nicole Aranas *NAA*
Assistant Village Manager

DATE: June 7, 2017

SUBJECT: Settlement Agreement – Case No. 15 L 644
Mary Ellen Mills v. Village of Lombard

Attached please find a copy of a Settlement Agreement and General Release in the matter of Mary Ellen Mills v. Village of Lombard. Plaintiff, Mary Ellen Mills, filed a complaint seeking damages against the Village of Lombard in July 2015. Parties have agreed to a proposed settlement amount of \$42,000, inclusive of attorney's fees and costs.

The proposed settlement agreement and mutual release are 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.

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

MARY ELLEN MILLS,)	
)	
Plaintiff,)	
)	
v.)	15 L 644
)	
VILLAGE OF LOMBARD,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (“Agreement”) is made and entered into this 25th day of May, 2017, by and between the following parties: MARY ELLEN MILLS (“Plaintiff”) and the Village of Lombard (“Village”).

PREAMBLE

WHEREAS, Plaintiff filed a Complaint against the Village on July 7, 2015 and said case presently is pending in the Circuit Court Of DuPage County as Case No. 15 L 644 (the “Lawsuit”); and

WHEREAS, Plaintiff asserted state law claims against the Village as set forth more particularly in the pleadings in the Lawsuit, which claims the Village has denied and continues to deny; and

WHEREAS, it is now the desire of Plaintiff and the Village 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 the Village.

2. Compromise and Settlement. This Agreement constitutes the compromise and settlement of disputed claims that is made to avoid further costs of litigation. Nothing contained herein, nor any actions taken by Plaintiff or the Village 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 the Village 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 the Village up to the date of this Agreement for any claims resulting from the allegations of this complaint of the incident occurring on July 9, 2014.

4. Dismissal of the Lawsuit. Plaintiff has dismissed the Lawsuit in this matter, with prejudice, on 5/25/14.

5. Payment to Plaintiff. In return for Plaintiff's dismissal of all her claims and her lawsuit against the Village in its entirety, the Village of Lombard agrees to pay Plaintiff the sum of **forty-two thousand dollars and zero cents (\$42,000.00), inclusive of attorneys fees and costs**, which sum shall be paid by a check issued by the Village of Lombard in the names of the Plaintiff, Mary Ellen Mills., and her law firm, Kaiser Law Office.

6. Plaintiff's Responsibility for Liens. Plaintiff agrees to assume responsibility for all outstanding liens, those known and unknown, including but not limited to medical liens and attorney liens, from the proceeds of this settlement. In the event that any liens are enforced

which have been served upon Plaintiff's attorneys, Plaintiff agrees to hold harmless the Village of Lombard, and its elected officials, officers, administrators, employees, directors, agents, successors, executors, legal and/or personal representatives of any kind, insurers, and assigns for all said liens. Plaintiff also hereby agrees to defend the Village against the enforcement of said liens and to assume all costs, expenses, and attorney fees related to said defense.

7. General Release and Covenant Not To Sue. Plaintiff, on behalf of herself and her 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 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 against the Village arising from or relating to acts or omissions through the date hereof, or involving the future or continuing effects of any acts or omissions which occurred through the date hereof arising out of the acts or omissions of the Village for the incident occurring on July 9, 2014.

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, agents, insurers, attorneys, executors, administrators, heirs, successors and assigns. Plaintiff further acknowledges and agrees that she 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 differences or additional facts.

Plaintiff further covenants and agrees not to sue, to file a charge, to make a claim or demand, to commence or maintain, or 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 against all liability, costs and expenses and attorneys fees in the event Plaintiff breaches this release and covenant not to sue. Plaintiff also assigns to the Village all her rights, titles, and interests in any relief from any proceeding that would be precluded by this release.

8. Confidentiality. The parties agree that the terms of this Agreement are strictly confidential, and therefore agree that from the date of presentment of this Agreement to them and in the future, they shall not disclose, permit or cause the disclosure of any information concerning this Agreement, except to the attorneys for the Parties; tax preparers/advisors and immediate family members, provided they also agree to keep this Agreement and its terms confidential. The Parties understand and agree that this confidentiality does not apply to any

mandatory disclosure of the terms of this Agreement as required by law, including as required by the Illinois Freedom of Information Act and Illinois Open Meetings Act.

9. No Attorneys' Fees. Plaintiff waives her right, if any, to attorneys' fees. The Village will pay all expenses incurred by itself, and Plaintiff will bear all her 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 the Village 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 her by the Village or their attorneys, to induce her to enter into this Agreement. No modification of this Agreement can be made except in writing and signed by Mary Ellen Mills, and an authorized representative of the Village.

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 she has. 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, **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 individual signing on behalf of the Village is 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 their respective personal representatives, agents, insurers, attorneys, executors, administrators, heirs, successors and assigns.

15. Knowing and Voluntary Signing of Binding Contract. Plaintiff represents and warrants that she 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, she is GIVING UP ALL CLAIMS AGAINST THE VILLAGE.

16. Opportunity To Consult Advisors. Plaintiff and the Village 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.

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

MARY ELLEN MILLS

VILLAGE OF LOMBARD



Scott Niehaus, Village Manager

Dated: 5/25/17

Dated: _____