

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)

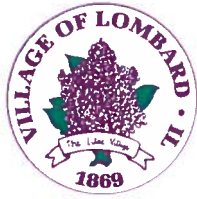
TO: PRESIDENT AND BOARD OF TRUSTEES
FROM: Scott Niehaus, Village Manager
DATE: January 29, 2014 (B of T) Date: February 6, 2014
TITLE: Settlement Agreement and Mutual Release
Anderson v. Village of Lombard v. Highland Park CVS v. RGL Landscaping

BACKGROUND/POLICY IMPLICATIONS:
Attached please find information regarding a proposed settlement agreement and mutual release in the matter of Anderson v. Village of Lombard. Plaintiff Anderson 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 February 6, 2014 Board of Trustees consent agenda.

Review (as necessary):
Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X Scott Niehaus _____ Date 1-29-14

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.



#140048

MEMORANDUM

TO: Keith Giagnorio, Village President and
Members of the Board of Trustees

FROM: Nicole Aranas *NA*
Assistant Village Manager

DATE: January 29, 2014

SUBJECT: Settlement Agreement – Case No. 2012 AR 2475
Anderson v. Village of Lombard v. Highland Pk. CVS, LLC v. RGL Landscaping

Attached please find a copy of a Settlement Agreement and Mutual Release in the matter of Anderson v. Village of Lombard v. Highland Park CVS, LLC v. RGL Landscaping. Plaintiff, Darcy Anderson filed a complaint seeking damages for a personal injury against the Village of Lombard in November 2012. Parties have agreed to a proposed settlement amount of \$1,500.

The proposed settlement agreement and mutual release are recommended for approval by 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, WHEATON, ILLINOIS**

DARCY C. ANDERSON)	
)	
Plaintiff,)	Case No. 2012 AR 2475
)	
vs.)	
)	
VILLAGE OF LOMBARD,)	
an Illinois Municipal Village,)	
)	
Defendant.)	

VILLAGE OF LOMBARD,)	
)	
Third-Party Plaintiff,)	
vs.)	
)	
HIGHLAND PARK CVS, LLC.)	
)	
Third-Party Defendant.)	

HIGHLAND PARK CVS, LLC)	
)	
Fourth-Party Plaintiff)	
Vs)	
)	
RGL LANDSCAPING)	
)	
Fourth-Party Defendant.)	

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (hereinafter the "Agreement") is made and entered into this ____ day of _____, 2013, by and between the following parties: Darcy Anderson ("Plaintiff") and Village of Lombard ("Village").

PREAMBLE

WHEREAS, Plaintiff filed a Complaint against the Village on November 25, 2012, and said case is presently pending in the Circuit Court of DuPage County, Arbitration Department (hereinafter the "Lawsuit"); and

WHEREAS, Plaintiff asserts various claims against the Village 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. This Agreement is limited to only the claims between the Plaintiff and the Village.

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 solely 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 against the Village up to the date of this Agreement.

4. Dismissal of the Lawsuit. Plaintiff shall dismiss with prejudice the Lawsuit in its entirety against the Village in exchange for payment of the settlement funds referenced in this Agreement.

the date of this Agreement 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 of any kind up to the date of this Agreement that the Plaintiff may have against the Village, its trustees, officers, administrators, employees, directors, agents, successors, executors, legal and/or personal representatives of any kind, insurers, 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 Agreement 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 that would be precluded by the release of claims, charges, liabilities, and/or causes of action herein, 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 him 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.

8. No Attorneys' Fees. Plaintiff waives his right, if any, to collect attorneys' fees incurred in this litigation from the Village. The Village will pay all litigation related expenses incurred by the Village, and the Village waives its right, if any, to collect attorneys' fees and costs incurred in this litigation from the Plaintiff. Plaintiff and the Village will each bear their own respective legal fees and expenses incurred by each of them, in the negotiation and preparation of this Agreement.

9. Choice of Law; Savings Provision. This Agreement will be governed by Illinois law without regard to the choice of law provisions thereof. If any provisions of

5. Payment and Additional Consideration to Plaintiff. In return for Plaintiff's dismissal of all his claims and his Lawsuit against the Village in its entirety and with prejudice, the Village agrees to pay the Plaintiff **One Thousand Five Hundred and No/100 Dollars (\$1,500.00)**. The Plaintiff is responsible for paying his own attorneys' fees and costs.

6. Plaintiff's Responsibility for Liens. Except as otherwise provided in this Agreement, Plaintiff agrees to assume responsibility for all outstanding liens of any kind, 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, Plaintiff agrees to hold harmless the Village, and its trustees, officers, administrators, employees, directors, agents, successors, executors, legal and/or personal representatives of any kind, insurers, and assigns for all said liens. Plaintiff also agrees to defend the Village against the enforcement of said liens and to assume all costs, expenses, and attorneys' fees related to said defense.

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, its trustees, officers, administrators, employees, directors, agents, successors, executors, legal and/or personal representatives of any kind, insurers, and assigns from any and all claims, charges, liabilities, debts, demands, grievances and causes of action of whatsoever kind up to the date of this Agreement, 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 up to the date of this Agreement against the Village, its trustees, officers, administrators, employees, directors, agents, successors, executors, legal and/or personal representatives of any kind, insurers, and assigns arising from or relating to acts or omissions of any kind through the date of this Agreement, or involving the future or continuing effects of any acts or omissions of any kind which occurred through the date of this Agreement.

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, specifically claims for negligence, and money damages or other claims up to

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.

10. 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 him by the Village or his 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 a representative of the Village.

11. 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 up to the date of this Agreement. 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.

12. Representations and Warranties By All Parties. All of the parties represent and warrant as to himself, herself or itself that: (a) he, she or it has 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) he, she or it has not assigned, encumbered or in any manner transferred all or any portion of the claims covered by this Agreement; (d) there are no 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.

13. Successors and 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.

14. 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 OF LOMBARD THAT MAY EXIST UP TO THE DATE OF THIS AGREEMENT.

15. 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.

16. 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 (1) Agreement.

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

DARCY ANDERSON

Darcy Anderson

Dated: 1-13-14

VILLAGE OF LOMBARD

Dated: _____