

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: April 24, 2024 (B of T) Date: May 2, 2024
TITLE: General Release and Settlement of All Claims
Jeffrey Mattison v. Village of Lombard

BACKGROUND/POLICY IMPLICATIONS:

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

Please place this item on the May 2, 2024 Board of Trustees consent agenda.

Review (as necessary):

Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X Scott Niehaus _____ Date 4/24/24

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.



#240158

MEMORANDUM

TO: Scott Niehaus
Village Manager

FROM: Nicole Aranas *NIA*
Deputy Village Manager

DATE: April 24, 2024

SUBJECT: Settlement Agreement – Case No. 2022 LA 000165
Jeffrey Mattison v. Village of Lombard

Attached please find a copy of a Settlement Agreement and General Release in the matter of Jeffrey Mattison v. Village of Lombard. Plaintiff, Jeffrey Mattison, filed a complaint seeking damages against the Village of Lombard in February of 2022. Parties have agreed to a proposed settlement amount of \$55,000.

The proposed settlement agreement and 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**

JEFFREY MATTISON, as Father and Next)	
Friend of MICHAEL MATTISON, a minor,)	
)	
Plaintiff,)	
v.)	Case No. 2022 LA 000165
)	
VILLAGE OF LOMBARD,)	
a municipal corporation,)	
)	
Defendant.)	

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (“Agreement”) is made and entered into this 2nd day of April 2024, by and between Jeffrey Mattison, as Father and Next of Friend of Michael Mattison, a minor (“Plaintiff”), and the Village of Lombard (“Village” or “Defendant”), and all known and unknown officers, employees, agents, appointed and elected officials, presidents, trustees, volunteers, attorneys, and representatives of the Village. Plaintiff and Defendant are referred to individually at times in this Agreement as “Party” and collectively referred to at times in this Agreement as the “Parties.”

PREAMBLE

WHEREAS, Plaintiff filed a Complaint against Defendant on February 15, 2022 in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, titled *Jeffrey Mattison, as Father and Next of Friend of Michael Mattison, a minor v. Village of Lombard, a municipal corporation*, Case No. 2022-LA-000165 (the “Lawsuit”);

WHEREAS, Plaintiff asserted claims for civil damages against Defendant for negligence, as set forth more particularly in the pleadings in the Lawsuit, which Defendant has denied and continues to deny; and

WHEREAS, it is now the desire of Plaintiff and Defendant to fully and finally resolve and settle the Lawsuit, their respective claims, causes of action, or actionable matters of any kind that exist between them, and any and all other claims or matters that may exist or arguably existed between them, as of the effective 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 mutual promises and covenants set forth below, the sufficiency of which is acknowledged:

1. Incorporation of the Preamble. Each of the introductory statements contained in the Preamble above are incorporated into Section 1 of this Agreement by reference and are material terms and provisions agreed to by Plaintiff and the Defendant.

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

3. Settlement of All Claims. Plaintiff and Defendant intend this Agreement to be a complete and total resolution and settlement of any and all claims and causes of action or actionable matters of any kind, whether asserted or not asserted, known or unknown, that Plaintiff may have or could have had against Defendant or any potential named or unnamed prior or potential Defendant from any and all injuries or claims arising out of or relating to Plaintiff's allegations and the claims asserted against Defendant as set forth in the pleadings in the Lawsuit, and which Defendant may or could have against Plaintiff.

4. Dismissal of the Lawsuit. Plaintiff will dismiss the Lawsuit against Defendant with prejudice and without costs pursuant to the terms of settlement set forth in this Agreement by executing and filing with the Court a stipulation to dismiss the Village of Lombard with prejudice.

As part of this settlement, each Party agrees to be responsible for the payment of their own respective attorney's fees and litigation costs.

5. Release, Waiver and Discharge of Claims. Plaintiff JEFFREY MATTISON, as Father and Next of Friend of MICHAEL MATTISON, a minor, individually and on behalf of any family members, personal representatives, administrators, successors and assigns, does fully and finally release, waive, and forever discharge the VILLAGE OF LOMBARD and its past and current appointed and elected officials, mayors and trustees, employees, volunteers, insurers, insurance programs, risk management pools, agents, attorneys, successors, assigns, and representatives of the VILLAGE OF LOMBARD (collectively "Released Parties"), from any and all claims, controversies, liabilities, judgments, causes of action, damages, demands, costs, attorney's fees and expenses, known and unknown, vested or contingent, direct or indirect, whether recoverable under the constitutions, statutes, or common law of the United States of America or State of Illinois, that Plaintiff may have, had, or may now have against the Released Parties, including but not limited to (1) the claims and allegations made or that could have been made in the lawsuit entitled *Mattison v. Village of Lombard*, Case No. 2022-LA-000165, pending in the Circuit Court of DuPage County, Illinois, and (2) any and all other acts or omissions of any kind or nature alleged committed by or omitted by the Released Parties from the beginning of time to the date of execution of this Agreement.

This Agreement further expresses a full and complete settlement of such alleged claims and liabilities asserted by JEFFREY MATTISON, as Father and Next of Friend of MICHAEL

MATTISON, a minor, and denied by the Released Parties for any and all economic or non-economic damages of any kind, including but not limited to general, specific, punitive, exemplary, medical or medically related expenses, loss of income, wages, other monies, and attorneys' fees and costs in exchange for the performance of the obligations, and any other considerations and compensation to be paid under this Agreement.

6. Payment to Plaintiff. In return for Plaintiff's dismissal of the Lawsuit with prejudice, Plaintiff waives and releases all claims and causes of action, and other actionable matters of any kind from any time prior to the execution of this Agreement shall become effective and irrevocable upon the payment to Plaintiff and his attorneys by the Village of the sum of **\$55,000.00 (Fifty-Five Thousand Dollars and No/100)**, inclusive of all attorneys' fees, litigation costs, and expenses incurred by Plaintiff or Plaintiff's attorneys relative to the Lawsuit. No other economic consideration or financial payments shall be paid by the Village to Plaintiff under this Agreement beyond the financial compensation stated in this paragraph. The above payment is being made to settle the Lawsuit based on a cost of defense economic decision of the Village and not a decision related to the merits of the Plaintiff's allegations set forth in the Lawsuit.

7. 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 Defendant, or anyone associated with Defendant, Plaintiff agrees to hold harmless Defendant or anyone associated with Defendant, 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") for all said liens. Plaintiff also hereby agrees to defend Defendant and the Village Affiliates against the enforcement of said liens and to assume all costs, expenses, and attorneys' fees related to said defense.

8. General Release and Covenant Not to Sue. Plaintiff, on behalf of himself and his heirs known and unknown, executors, administrators, successors and assigns, for and in consideration of the payment set forth herein, irrevocably and unconditionally releases and forever until the end of time discharges and acquits Defendant Village of Lombard and the Village Affiliates from any and all claims, charges, liabilities, debts, demands, grievances, and causes of action of any kind (hereinafter referred to as the "Claims"), 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 Defendant or the Village Affiliates arising from or relating to any acts or omissions through the effective date of this Agreement, or involving the future or continuing effects of any acts or omissions which occurred through the effective date of this Agreement.

The Claims released and waived by this Agreement include, but are not limited to, the specific Claims relating to or arising out of the allegations set forth in the pleadings in this 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, ordinance, 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 her. However, it is the intention of Plaintiff and Defendant hereto THAT THIS AGREEMENT SHALL BE EFFECTIVE AS A BAR FOR ALL TIME TO EACH AND EVERY CLAIM,

CHARGE, LIABILITY, AND/OR CAUSE OF ACTION OF ANY KIND THAT PLAINTIFF MAY HAVE OR HAS HAD AGAINST DEFENDANT AND THE VILLAGE AFFILIATES. Plaintiff further acknowledges and agrees that even if 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, this Agreement will be and remain effective in all respects notwithstanding any such different 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 Agreement, 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 Defendants against any and all liability, costs and expenses, and attorneys' fees in the event Plaintiff breaches the release and covenant not to sue.

9. Confidentiality. Plaintiff and Defendant agree that the terms of this Agreement are strictly confidential unless disclosure is required by law or authorized below, 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 to any individuals or entities, 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; and as otherwise required by law, including applicable provisions of the Illinois Freedom of Information Act. Each party shall be liable for any proven damages in the event that either party is found to have breached this confidentiality provision in a court of law. The prevailing party will be entitled to

reimbursement of legal fees and costs incurred in such action. It is further agreed that One Hundred Dollars (\$100.00) of the settlement paid herein includes consideration for this Agreement concerning confidentiality. The Parties further 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.

10. Mutual Non-Disparagement. Plaintiff nor the Village of Lombard, but specifically the board, and any defendant shall not directly or indirectly, in any capacity or manner, make, express, transmit speak, write, verbalize or otherwise communicate in any way, or cause, further, assist, solicit, encourage, support or participate in any of the foregoing, any remark, comment, message, information, declaration, communication or other statement of any kind, whether verbal, in writing, electronically transferred or otherwise, that is reasonably construed to be derogatory or critical of, or negative toward the Village, or its officials, agents, employees, or attorneys, or Plaintiff, regarding the matters alleged in the lawsuit filed by the Plaintiff against the Village. Communication regarding this settlement or the opposing party to this lawsuit (Plaintiff or Defendant and its employees and former employees) shall be governed by paragraph 19, except as otherwise required by law.

11. No Attorneys' Fees and Costs. Plaintiff waives his right, if any, to the payment of attorneys' fees, litigation costs, and expenses by Defendant or the Village Affiliates. Plaintiff will pay all attorneys' fees and litigation costs he incurred and Plaintiff will bear all of his incurred expenses in the negotiation and preparation of this Agreement.

12. Choice of Law; Savings Provision; Venue. 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.

13. Entire Agreement. This Agreement represents the entire agreement between Plaintiff and Defendant with respect to the matters set forth herein and supersedes all prior agreements or understandings, if any, between Plaintiff and Defendant. 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 Defendant or its attorneys, to induce him to enter into this Agreement. No modification of this Agreement can be made except in writing and signed by Plaintiff, Defendant, and an authorized representative of the Village of Lombard.

14. For Settlement Only. This Agreement is entered into for settlement purposes only and represents the compromise of all disputed Claims, actual or potential, that Plaintiff has or may believe he has. Neither this Agreement, the decision to enter into this Agreement, nor anything done pursuant to this Agreement, shall be construed as an admission or evidence of any wrongdoing or liability by Plaintiff or the Defendant, 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.

15. Representations and Warranties by Plaintiff and Defendant. Plaintiff and Defendant 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 no other Claims, charges, complaints, actions for relief, suits, arbitrations, or other claims or proceedings pending between Plaintiff and Defendant in any court,

before any agency, or in any forum; and (e) no other person or third party has any right, title, or interest in any of the Claims covered by this Agreement.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Plaintiff and Defendant, and their respective personal representatives, official representatives, agents, insurers, attorneys, executors, administrators, heirs, successors, and assigns.

17. Knowing and Voluntary Signing of Binding Contract. Plaintiff represents and warrants that he has read this Agreement and understands all of its terms and he 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 DEFENDANTS NAMED OR UNNAMED AND THE VILLAGE OF LOMBARD OR ANY OF ITS AGENTS OR OFFICERS. The parties further acknowledge and agree that this is a settlement of disputed claims, and that this settlement is not an admission of liability of any wrongful, unlawful or unconstitutional act, omission or conduct by or on the part of any of the Released Parties, the same being denied, and that this settlement shall not serve as evidence or notice of any wrongful, unlawful or unconstitutional act, omission or conduct by or on the part of the Released Parties in any court or proceeding of any kind, except in a proceeding to enforce the terms of the settlement. The parties also acknowledge and agree that this settlement is made to avoid the uncertainty and expense of litigation and for the purpose of judicial economy.

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

19. 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, Plaintiff and Defendant have executed this Agreement by affixing their signatures and the dates of execution where indicated below. The effective date of this Agreement, as noted on Page 1 above, shall be the date on which the last signatory signs and dates this Agreement.

PLAINTIFF
JEFFREY MATTISON

DEFENDANT
VILLAGE OF LOMBARD



Name: Jeffrey Mattison

Name: _____

Dated: 04/02/2024

Dated: _____