

ORIGINAL

RESOLUTION NO. R-2017-05

**A RESOLUTION APPROVING
THE SETTLEMENT AGREEMENT AND GENERAL RELEASE
AND AUTHORIZING THE PAYMENT OF SETTLEMENT FUNDS
IN THE *PENA VS. VILLAGE OF MAYWOOD* LITIGATION
(Settlement Amount: \$45,000)**

WHEREAS, the Village of Maywood ("Village") is a home rule municipality established and existing in accordance with the Constitution of the State of Illinois of 1970; and

WHEREAS, the Village of Maywood has reached terms on the settlement of the Plaintiffs' Attorney's fee petition in *Pena v. Maywood, et al.*, 14 CV 4214, in litigation previously pending in the United States District Court for the Northern District of Illinois against the Village and Officer Patrick Reilly ("Reilly"); and

WHEREAS, the counsel for Plaintiffs has provided a signed Settlement Agreement and General Release ("Release") to the Village, releasing his claim for attorneys' fees against the Village. A copy of the Release is attached to this Resolution as **Exhibit 1**; and

WHEREAS, pursuant to the Release, the Plaintiff has agreed to forego his right to file a formal petition for his attorneys' fees in this matter; and

WHEREAS, the Board of Trustees of the Village finds that it is in the public's best interests that the Settlement Agreement and General Release be approved and the payment of the settlement funds be authorized.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MAYWOOD, COOK COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: The President and Board of Trustees of the Village of Maywood approve and authorize the execution of the Settlement Agreement and General Release, a copy of which is attached hereto as **Exhibit 1**. Further, the Board of Trustees authorize and direct the Village President and Village Clerk, or their designees, to execute the Release, and to execute and deliver all other instruments and documents that are necessary to fulfill the Village's obligations under the Release.

SECTION 2: The President and Board of Trustees of the Village of Maywood authorize the payment of settlement in the amount of Forty Five Thousand and No/100 Dollars (\$45,000.00).

ADOPTED this 24th day of January, 2017, pursuant to a roll call vote as follows:

AYES: Mayor Edwenna Perkins, Trustee(s) H. Yarbrough, Sr., I. Brandon, A. Dorris, M. Rogers, M. Lightford and R. Rivers.

NAYS: None

ABSENT: None

APPROVED by me as Village President, and attested to by the Village Clerk, on the 26th day of January, 2017.



VILLAGE PRESIDENT

ATTEST:




VILLAGE CLERK 

Exhibit 1

SETTLEMENT AGREEMENT AND GENERAL RELEASE

(attached)

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (“Agreement”) is made and entered into this ____ day of ____, 2017, by and between the following parties: Richard J. Dvorak (“Dvorak”) and the Village of Maywood (“Village”).

PREAMBLE

WHEREAS, Dvorak filed a Complaint against Defendant, Officer Patrick Reilly (“Defendant”) and the Village in the United States District Court, Northern District of Illinois, Eastern Division as Case No. 14 CV 4214 (the “Lawsuit”) on behalf of Jose Natividad Pena, Maria G. Reyes and Concepcion Pena (“Plaintiffs”); and said case was dismissed on an acceptance of judgment by Plaintiffs in that matter.

WHEREAS, it is now the desire of Dvorak and the Village to fully and finally resolve and enter into a full and final compromise, settlement and mutual release with regard to Dvorak’s claim for attorneys’ fees under FRCP 54 and Local Rule 54.3; and,

WHEREAS, the Village has the authority to enter into an agreement with Dvorak, on behalf of itself and the Defendant, for the payment of attorneys’ fees that Dvorak incurred in the Lawsuit; and,

WHEREAS, the underlying civil matter contained in the Lawsuit was settled between the parties, and payment was made by the Village to Plaintiffs pursuant to the acceptance of an offer of judgment and the entry of said judgment by the Court in this matter; and,

WHEREAS, a judgment was previously entered by the Court in this matter on Dvorak’s costs in the Lawsuit.

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 Dvorak 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 Dvorak 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. Dvorak 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 Dvorak may have against Defendant and/or the Village up to the date of this Agreement for attorneys' fees under FRCP 54 and Local Rule 54.3 in the Lawsuit.

4. Payment to Dvorak. In return for Dvorak's agreement to forego any other formal or informal petition for fees under FRCP 54 and Local Rule 54.3 in the Lawsuit, the Village of Maywood, on behalf of itself and Defendant, agrees to pay Dvorak the sum of **\$45,000.00**, which sum shall be paid by a check issued by the Village of Maywood to Dvorak Law Offices LLC.

5. Dvorak's Responsibility for Costs and Expenses. Dvorak agrees to assume responsibility for all outstanding costs and expenses, those known and unknown, that he may owe to Plaintiffs or any other third party as a result of the Lawsuit, from the proceeds of this settlement. Dvorak agrees to hold harmless the Defendant and the Village, and its elected officials, officers, administrators, employees, directors, agents, successors, executors, legal

and/or personal representatives of any kind, insurers, and assigns for all claims for said costs and expenses.

6. General Release and Covenant Not To Sue. Dvorak, 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 Defendant and 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 Dvorak has, had or may have against Defendant and the Village arising under FRCP 54 or Local Rule 54.3 as they relate to the Lawsuit.

7. 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.

8. 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.

9. Entire Agreement. This Agreement represents the entire agreement between Dvorak, Defendant and the Village with respect to the matters set forth herein and supersedes all prior agreements or understandings, if any, between the parties. Dvorak acknowledges that except for the explicit provisions of this Agreement, no promises or representations of any kind have been made to him by Defendant, the Village 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 Dvorak and an authorized representative of the Village.

10. For Settlement Only. This Agreement is entered into for settlement purposes only and represents the compromise of disputed claims, actual or potential, which Dvorak has or may believe he has under FRCP 54 and Local Rule 54.3. Neither this Agreement, the decision to enter into this Agreement, nor anything done pursuant to this Agreement, shall be construed to be an admission by Defendant or the Village of the agreed upon, justified or valid amount of attorneys' fees incurred by Dvorak in the Lawsuit, such amount 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.

11. 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.

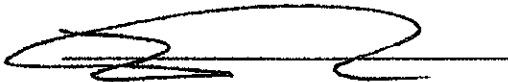
12. Successors & Assigns. This Agreement shall be binding upon and inure to the benefit of Dvorak, Defendant and the Village, and their respective personal representatives, agents, insurers, attorneys, executors, administrators, heirs, successors and assigns.

13. Knowing and Voluntary Signing of Binding Contract. Dvorak 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. Dvorak acknowledges that by signing this Agreement, he is giving up all claims against the Defendant and the Village under FRCP 54 and Local Rule 54.3 with regard to the Lawsuit.

14. 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.

RICHARD J. DVORAK



Dated: 1/12/17

VILLAGE OF MAYWOOD

Willie Norfleet, Jr., Village Manager

Dated: _____

STATE OF ILLINOIS)
) **SS**
COUNTY OF COOK)

CLERK'S CERTIFICATE

I, Viola Mims, Clerk of the Village of Maywood, in the County of Cook and State of Illinois, do hereby certify that the annexed and foregoing is a true and correct copy of that certain Resolution now on file in my Office, entitled:

RESOLUTION NO. R-2017-05
A RESOLUTION APPROVING
THE SETTLEMENT AGREEMENT AND GENERAL RELEASE
AND AUTHORIZING THE PAYMENT OF SETTLEMENT FUNDS
IN THE *PENA VS. VILLAGE OF MAYWOOD* LITIGATION
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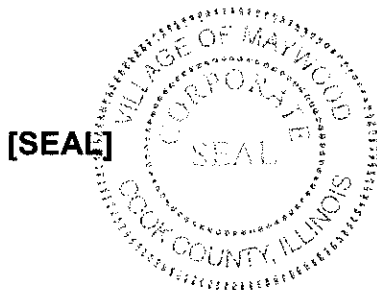
which Resolution was passed by the Board of Trustees of the Village of Maywood at a Regular Village Board Meeting on the 24th day of January, 2017, at which meeting a quorum was present, and approved by the President of the Village of Maywood on the 26th day of January, 2017.

I further certify that the vote on the question of the passage of said Resolution by the Board of Trustees of the Village of Maywood was taken by Ayes and Nays and recorded in the minutes of the Board of Trustees of the Village of Maywood, and that the result of said vote was as follows, to-wit:

AYES: Mayor Edwenna Perkins, Trustee(s) H. Yarbrough, Sr., I. Brandon, A. Dorris, M. Rogers, M. Lightford and R. Rivers.
NAYS: None
ABSENT: None

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Village of Maywood, this 26th day of January, 2017.



Viola Mims by Jp Ann Murphy
Village Clerk Deputy Clerk