

RESOLUTION NO. R-2018-09

**A RESOLUTION APPROVING
THE SETTLEMENT AGREEMENT AND GENERAL RELEASE
IN THE STATE FARM V. VILLAGE OF MAYWOOD, ET AL. LITIGATION**

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 has reached terms on the settlement of the litigation in *State Farm v. Village of Maywood, et al.*, Case No. 16 M1 14626, which was filed in Cook County Circuit Court against the Village and Officer Kevin Jarzabrowski ("Jarzabrowski"); and

WHEREAS, the Plaintiff has provided a signed Settlement Agreement and General Release ("Release") to the Village and Jarzabrowski, releasing its claims against the Village and Jarzabrowski. A copy of the unsigned Release is attached to this Resolution as **Exhibit "A"**; and

WHEREAS, pursuant to the Release, the Plaintiff has agreed to dismiss his lawsuit against the Village and Jarzabrowski; 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.

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 "A"**. 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.

ADOPTED this 20th day of March, 2018, pursuant to a roll call vote as follows:

AYES: Mayor Perkins, Trustee(s) H. Yarbrough, I. Brandon, A. Sanchez, K. Wellington, M. Lightford and R. Rivers

NAYS: None

ABSENT: None

APPROVED by me as Village President, and attested to by the Village Clerk, on the 20th day of March, 2018.

Edwenna Perkins, Village President

ATTEST:

Viola Mims, Village Clerk

Exhibit "A"

Settlement Agreement and General Release

(attached)

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
MUNICIPAL DEPARTMENT, FIRST DISTRICT**

| | | |
|---|---|------------------|
| STATE FARM MUTUAL AUTOMOBILE |) | |
| INSURANCE COMPANY, as subrogee of |) | |
| Clifton E. McKinnis, and CLIFTON E. |) | |
| McKINNIS, individually. |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | No. 16 M1-014626 |
| |) | |
| VILLAGE OF MAYWOOD & |) | |
| KEVIN JARZABROWSKI, |) | |
| |) | |
| Defendants. |) | |
| <hr style="border-top: 1px dashed black;"/> | | |
| |) | |
| VILLAGE OF MAYWOOD & |) | |
| KEVIN JARZABROWSKI, |) | |
| |) | |
| Counter-Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| STATE FARM MUTUAL AUTOMOBILE |) | |
| INSURANCE COMPANY, as subrogee of |) | |
| Clifton E. McKinnis, and CLIFTON E. |) | |
| McKINNIS, individually. |) | |
| |) | |
| Counter-Defendants. |) | |

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (“Agreement”) is made and entered into this _____ day of _____, 2018, by and between the following parties: STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, as Subrogee of Clifton E. McKinnis, (“Plaintiff”), KEVIN JARZABROWSKI (“Jarzabrowski”) and the VILLAGE OF MAYWOOD (“Village”).

PREAMBLE

WHEREAS, Plaintiff filed a Complaint against the Village and Jarzabrowski (“Defendants”) on October 11, 2016 and said case presently is pending in the Circuit Court Of Cook County as Case No. 16 M1 14626 (the “Lawsuit”); and

WHEREAS, Plaintiff asserted state law claims against the Defendants as set forth more particularly in the pleadings in the Lawsuit, which claims the Defendants have denied and continue to deny; and

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

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 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 the 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 Defendants and the Defendants may have against the Plaintiff up to the date of this Agreement for any claims resulting from the allegations of this complaint of the incident occurring on February 21, 2016.

4. Dismissal of the Lawsuit. Plaintiff has dismissed the Lawsuit in this matter, with prejudice, on _____.

5. General Release and Covenant Not To Sue. Plaintiff, on behalf of itself and its 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 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 against them, 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 Defendants for the incident occurring on February 21, 2016.

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 it. 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 Defendants and their respective personal representatives, agents, insurers, attorneys, executors, administrators, heirs, successors and assigns. Plaintiff further acknowledges and

agrees that it 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 Defendants 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 Defendants all its rights, titles, and interests in any relief from any proceeding that would be precluded by this release.

In consideration for Plaintiff's dismissal of its claim against them, Defendants agree to dismiss the pending counterclaim in the instant action, and 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 Defendants or brought by any other person, agency or entity which would provide relief or benefit to Defendants, including any action for personal injury or for subrogation with regard to property damage, medical payments and indemnity paid to Officer

Jarzabrowski as a result of his injuries from the February 21, 2016 incident. This shall include any action against Plaintiff as subrogee of its insured Clifton McKinnis, or against Clifton McKinnis directly.

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 Maywood, Officer Jarzabrowski, and the Village's 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 Defendants against the enforcement of said liens and to assume all costs, expenses, and attorney fees related to said defense.

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

9. 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.

10. Entire Agreement. This Agreement represents the entire agreement between Plaintiff and the 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 it by the Defendants or their attorneys, to induce it to enter into this Agreement. No modification of this Agreement can be made except in writing and signed by an authorized representative of the Plaintiff and of the Defendants.

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 it 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 Defendants, **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 & 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 Defendants 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.

13. Successors & Assigns. This Agreement shall be binding upon and inure to the benefit of Plaintiff and the Defendants, 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 it 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, it is GIVING UP ALL CLAIMS AGAINST THE DEFENDANTS.

15. Opportunity To Consult Advisors. Plaintiff and the Defendants 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 agreement.

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

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, as Subrogee of
Clifton E. McKinnis

VILLAGE OF MAYWOOD

Dated: _____

Dated: _____

KEVIN JARZABROWSKI

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 attached document is a true and correct copy of that certain Resolution now on file in my Office, entitled:

RESOLUTION NO. R-2018-09

**A RESOLUTION APPROVING
THE SETTLEMENT AGREEMENT AND GENERAL RELEASE
IN THE *STATE FARM V. VILLAGE OF MAYWOOD, ET AL.* LITIGATION**

which Resolution was passed by the Board of Trustees of the Village of Maywood at a Regular Village Board Meeting on the 20th day of March, 2018, at which meeting a quorum was present, and approved by the President of the Village of Maywood on the 20th day of March, 2018.

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 Perkins, Trustee(s) H. Yarbrough, I. Brandon, A. Sanchez, K. Wellington, 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 21st day of March, 2018.

Viola Mims, Village Clerk

[SEAL]