

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made and entered into this 31 day of March, 2017, by and among MORGAN P. O’BRIEN and his guardians BARBARA O’BRIEN and MORGAN R. O’BRIEN (hereinafter collectively referred to as “Plaintiffs”), and the VILLAGE OF ORLAND PARK (the “Defendant”).

**PREAMBLE**

**WHEREAS**, the Plaintiffs filed a complaint against the Defendant on June 23, 2016, and said case is pending in the United States District Court for the Northern District of Illinois, Eastern Division, as Case No. 16 CV 6591 (the “Lawsuit”); and

**WHEREAS**, Plaintiffs asserted claims for civil damages against the Defendant under the Americans with Disabilities Act, 42 U.S.C. §§12101 *et seq.*, for the alleged discriminatory termination of Plaintiff MORGAN O’BRIEN’S employment and the alleged failure to provide reasonable accommodations in violation of said Act as set forth more particularly in the pleadings in the Lawsuit, which claims the Defendant has denied and continues to deny; and

**WHEREAS**, Plaintiffs have represented that they have obtained the approval of the Probate Court and the District Court, and all other necessary and required approvals, and are fully and legally authorized to enter into and be bound by this Agreement both on each individual’s own behalf on and on behalf of Plaintiff MORGAN P. O’BRIEN; and

**WHEREAS**, it is the desire of the Plaintiffs and the Defendant to fully and finally resolve and settle the Lawsuit, and all related claims, causes of action, or actionable matters of any kind, which exist between them and any and all other claims or matters which 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 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 hereby acknowledged, the Plaintiffs and the Defendant agree as follows:

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 the Plaintiffs 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 the Plaintiffs 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 Defendant.

3. Settlement of All Claims. The Plaintiffs and the 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 the Plaintiffs have or may have against the Defendant in any way related to the employment of Morgan P. O'Brien or the termination thereof, from any time in the past up to the effective date of this Agreement.

4. Dismissal of the Lawsuit. The Plaintiff will dismiss with prejudice the Lawsuit in its entirety against the Defendant within two (2) weeks of the effective date of this Agreement.

5. Payment to the Plaintiffs. In return for the Plaintiffs' release and waiver of all claims, causes of action and other actionable matters of any kind, and the dismissal with prejudice of the Lawsuit in its entirety, the Defendant agrees to pay the Plaintiffs the sum of **THIRTY THOUSAND and no/100 DOLLARS (\$30,000.00), inclusive of all attorney fees,**

**costs and expenses incurred by the Plaintiffs or the Plaintiffs' attorneys relative to the Lawsuit or any related matter.** The settlement proceeds shall be issued within two (2) weeks of the Plaintiffs' dismissal of the Lawsuit and made payable as follows:

1. A check in the amount of \$7,900.00 payable to Equip for Equality (FEIN #36-3361312) attributable to attorneys' fees incurred by Plaintiffs in the Lawsuit. An IRS Form 1099 will be issued by the Village for Equip for Equality regarding this check.
2. A check in the amount of \$11,050.00, payable to "Life's Plan, Inc. Pooled Special Needs Pay Back Trust on behalf of Morgan P. O'Brien" for lost wages which shall be subject to regular withholdings and deductions. The Village shall issue a W-2 to Morgan P. O'Brien regarding this check.
3. The total amount of \$11,050.00 for alleged emotional distress will be paid in two checks. One check in the amount of \$10,050 will be made payable to "Life's Plan, Inc. Pooled Special Needs Pay Back Trust on behalf of Morgan P. O'Brien." A second check in the amount of \$1000 will be made payable to: "Barbara O'Brien and Morgan R. O'Brien, on behalf of Morgan P. O'Brien." The Village shall issue an IRS Form 1099 to Morgan P. O'Brien regarding these checks totaling \$11,050.00. With respect to this amount, the Village makes no representation or warranty to Plaintiffs or their attorneys regarding the tax treatment or consequences of this payment by the Internal Revenue Service or any other tax authority. Plaintiffs will be solely responsible for the payment of any and all taxes of whatever kind that may be due or payable in connection with this payment. Plaintiffs agree that any and all tax liability which may result from the

payment of money as set forth in this Agreement rests with them alone. Plaintiffs agree to indemnify and hold the Village harmless from and against any claim, penalty, interest or other liability asserted by any governmental agency related to its payment of monies hereunder.

The consideration set forth above and provided to Plaintiffs pursuant to this Agreement is in full satisfaction of any and all Claims which any Plaintiffs have or may have against Defendant and/or any or all Village Affiliates for damages, monetary compensation of any kind, costs or attorneys' fees relating in any way to Plaintiff MORGAN P. O'BRIEN'S employment with the Village of Orland Park or the termination thereof.

6. The Plaintiff's Responsibility for Liens. The Plaintiffs agree to assume responsibility for any outstanding liens of any kind, those known and unknown, including but not limited to -- medical liens, tax liens, real property liens and attorney liens -- from the proceeds of this settlement. To the extent that any person seeks to enforce any liens against the Defendant, or anyone associated with the Village of Orland Park, the Plaintiffs agree to hold harmless the Defendant or anyone associated with the Village, 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. The Plaintiffs also hereby agrees to defend the Defendant and the Village Affiliates against the enforcement of said liens and to assume all costs, expenses and attorney fees related to said defense. As a condition precedent to Plaintiffs' obligations to defend and other duties set forth above, the Defendant shall timely provide Plaintiffs and their counsel with notice of any claim of lien by any third party.

7. General Release and Covenant Not To Sue. The Plaintiffs, on behalf of themselves, both individually and collectively, and their heirs known and unknown, executors, administrators, successors and assigns, for and in consideration of the payment set forth herein, irrevocably and unconditionally release and forever until the end of time discharge and acquit the Defendant and/or the Village Affiliates from any and all claims, charges, liabilities, debts, demands, grievances and causes of action of any kind, including any and all appeals, (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 the Plaintiffs have, had or may have against the Defendant and/or any or all of the Village Affiliates as of the effective date this of Agreement, or any time prior to that date, arising from or relating to Plaintiff MORGAN P. O'BRIEN's former employment with Defendant Village or the termination therefrom.

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 and the Claims set forth in the pleadings in the Lawsuit, claims for pain and suffering, mental and emotional distress, and monetary damages, or any other claims under any federal, state or local constitution, statute, regulation, order, ordinance, common law or other authority having the force of law that arose from the beginning of time to the effective date of this Agreement.

The Plaintiffs acknowledge and agree 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 them. However, it is the intention of the Plaintiffs and the Defendant 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 THE PLAINTIFFS HAVE, MAY HAVE OR HAD AGAINST THE DEFENDANT AND/OR ANY OR ALL OF THE VILLAGE AFFILIATES AS OF THE EFFECTIVE DATE OF THIS AGREEMENT, OR ANY TIME PRIOR TO THAT DATE, ARISING FROM OR RELATED TO THE PLAINTIFF MORGAN P. O'BRIEN'S EMPLOYMENT WITH DEFENDANT VILLAGE OR THE TERMINATION THEREFROM. The Plaintiffs further acknowledge and agree that even if they 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, that this Agreement will be and remain effective in all respects notwithstanding any such different or additional facts.

The Plaintiffs further covenant and agree not to sue, to file a charge, to make a claim or demand, to commence or maintain 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 the Plaintiffs, or brought by any other person, agency or entity which would provide relief or benefit to the Plaintiffs, and agree to indemnify the Defendant against any and all liability, costs and expenses and attorneys fees in the event the Plaintiffs breach this covenant not to sue.

Excluded from this covenant not to sue is the right to file a charge with or participate in an investigation conducted by a State or federal administrative agency. Plaintiffs do waive, however, their right to any monetary recovery should the Equal Employment Opportunity Commission or any other agency pursue any claims on their behalf if they file a charge or participate in an investigation.

8. Medicare Considerations. This settlement is based upon a good faith determination of the parties to resolve the Lawsuit and all issues that exist between them. The

parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. Section 1395y(b). The parties resolved this matter in compliance with both state and federal law. The parties made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms.

Plaintiffs and Plaintiffs' counsel warrant that Plaintiff Morgan P. O'Brien is not a Medicare beneficiary as of the effective date of this Agreement. Because Plaintiff Morgan P. O'Brien is not a Medicare recipient as of the effective date of this Agreement, no conditional payments have been made by Medicare.

The Plaintiffs will indemnify, defend and hold the Defendant and the Village Affiliates harmless from any and all claims, Medicare conditional payments and rights to payment, known or unknown. If a governmental entity, or anyone acting on behalf of any governmental entity, seeks damages including multiple damages from the Defendant and/or any Village Affiliate relating to payment by such governmental entity, or anyone acting on behalf of such governmental entity, relating to the Plaintiffs' alleged injuries, claims or lawsuit, the Plaintiffs will defend and indemnify the Defendant and/or the Village Affiliates, and hold them harmless from any and all such damages, claims, liens, Medicare conditional payments and rights to payment, including any attorneys' fees sought by such entities.

The parties acknowledge and understand that any present or future action or decision by CMS or Medicare on this settlement, or Plaintiffs' eligibility or entitlement to Medicare or Medicare payments, will not render this release void or ineffective, or in any way affect the finality of this settlement.

9. Confidentiality. The Plaintiffs recognize that upon approval by Defendant's Village Board this Agreement will become a public record that is subject to release pursuant to the Illinois Freedom of Information Act.

10. No Attorneys' Fees and Costs. The Plaintiffs waive their right, if any, to attorneys' fees and costs other than those specifically set forth in Paragraph 5 above. The Plaintiffs will pay any additional attorneys' fees and litigation costs they incurred, and the Plaintiffs will bear all their incurred expenses in the litigation and in the negotiation and preparation of this Agreement. Plaintiffs represent and warrant that, other than the attorneys referenced in Paragraph 5 above, no attorney retained or employed by them has any right to make any claim upon Defendant or any Village Affiliate or upon any of the consideration paid pursuant to this Agreement. In the event that any attorney attempts to obtain attorneys' fees or any other type of compensation other than what is set forth in Paragraph 5 above, Plaintiffs agree that they shall indemnify the Defendant and/or the Village Affiliates and hold them harmless from any and all losses, costs, damages and expenses, including but not limited to attorneys' fees and court costs, arising out of any such claim.

11. 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.

12. Entire Agreement. This Agreement represents the entire agreement between the Plaintiffs and the Defendant with respect to the matters set forth herein and supersedes all prior agreements or understandings, if any, between the Plaintiffs and the Defendant. The Plaintiffs acknowledge that except for the explicit provisions of this Agreement, no promises or



representations of any kind have been made to them by the Defendant or its attorneys to induce them to enter into this Agreement. No modification of this Agreement can be made except in writing and signed by an authorized representative of the Village of Orland Park.

13. For Settlement Only. This Agreement is entered into for settlement purposes only and represents the compromise of all disputed Claims, actual or potential, which the Plaintiffs have or may believe they have. 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 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.

14. Representations & Warranties by the Plaintiffs and the Defendants. The Plaintiffs and the 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 of Orland Park 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 Claims, charges, complaints, actions for relief, suits, arbitrations or other claims or proceedings, pending between the Plaintiffs and the 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.

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

16. Knowing and Voluntary Signing of Binding Contract. The Plaintiffs represent and warrant that they have read this Agreement and understand all of its terms and they execute this Agreement voluntarily and without duress or undue influence, and with full knowledge of its significance, intending to be legally bound. The Plaintiffs acknowledge that by signing this Agreement, they are GIVING UP ALL CLAIMS AS DEFINED IN THIS AGREEMENT AGAINST ALL THE DEFENDANTS AND RELEASED PARTIES.

17. Opportunity To Consult Advisors. The Plaintiffs have had reasonable opportunity to consult with attorneys or other advisors of their own choosing before executing this Agreement.

18. 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.

19. Effective Date. The Effective Date of this Agreement shall be the date on which it is approved and executed by the Village of Orland Park.

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

MORGAN P. O'BRIEN



Dated: 3/31/17

BARBARA O'BRIEN

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VILLAGE OF ORLAND PARK

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

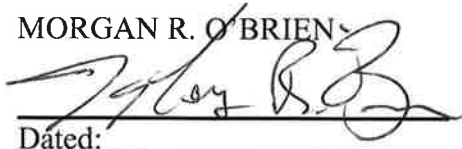
ATTEST:

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Village Clerk

Dated: 3/30/17

MORGAN R. O'BRIEN



Morgan R. O'Brien

Dated: \_\_\_\_\_

16. Knowing and Voluntary Signing of Binding Contract. The Plaintiffs represent and warrant that they have read this Agreement and understand all of its terms and they execute this Agreement voluntarily and without duress or undue influence, and with full knowledge of its significance, intending to be legally bound. The Plaintiffs acknowledge that by signing this Agreement, they are GIVING UP ALL CLAIMS AS DEFINED IN THIS AGREEMENT AGAINST ALL THE DEFENDANTS AND RELEASED PARTIES.

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

MORGAN P. O'BRIEN

Morgan P. O'Brien

Dated: 3/29/17

VILLAGE OF ORLAND PARK

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

BARBARA O'BRIEN

Barbara O'Brien

ATTEST:

\_\_\_\_\_  
Village Clerk