

KTJ

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Maycliff Subdivision
Storm Water Improvements
- copy placed in
2015-0459

October 21, 2016

Hand Delivered
Mr. John Ingram, Director
Department of Public Works
Village of Orland Park
15655 Ravinia Avenue
Orland Park, IL 60462

Re: Huemmer, Kenneth
8640 W. 144th Place
Orland Park, Illinois 60462

John:

Enclosed is the Settlement Agreement and Release in this matter that has been signed by Kenneth and Helen Huemmer. Please obtain the signatures of the Village, Airy's, Inc. and Christopher B. Burke Engineering, Ltd. and return a fully signed copy to me.

Let me know if you have any questions.

Very truly yours,

KLEIN, THORPE AND JENKINS, LTD.


E. Kenneth Friker

Enc.

11/9/2016

Ken,

Attached is the original signed agreement. Copies have been emailed to Airy's and Burke, LLC. The other copy with original signatures has been forwarded to the Clerk's office



SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into this 5th day of October, 2016, by and among KENNETH HUEMMER and HELEN MORGAN HUEMMER, his wife (collectively the "Claimant"), the VILLAGE OF ORLAND PARK, an Illinois municipal corporation (the "Village"), AIRY'S INC., an Illinois corporation ("Airy's") and BURKE, LLC, an Illinois limited liability company ("Burke").

RECITALS

A. Claimant allegedly suffered property damage (the "Occurrence") during the years 2015 and 2016 when the Village, Airy's and Burke were performing public utility construction work on and around the residential premises owned by Claimant commonly known as 8640 W. 144th Place, Orland Park, Illinois (the "Premises") and has otherwise advised the Village of his and her intent to make a claim for said property damage.

B. The Village, Airy's and Burke deny any wrongdoing or any liability of any nature whatsoever with respect to the claim made by Claimant and deny that Claimant suffered any injuries, damages or losses or is due any monies or suffered any other injuries or damage as Claimant claims.

C. It is the desire of Claimant and the Village, Airy's and Burke to compromise and settle all disputed issues and claims among them that were made or could have been made and arising out of the Occurrence, and to achieve a mutually acceptable resolution of the claim without further expense, inconvenience, uncertainty and delay.

AGREEMENT

Now, therefore, in consideration of the mutual covenants and promises contained in this Agreement, Claimant and the Village, Airy's and Burke agree as follows:

1. Acknowledgment. Claimant and the Village, Airy's and Burke acknowledge that they are entering into this Agreement based upon their own investigation and in reliance on the representations contained in this Agreement.
2. Disclaimer. This Agreement does not constitute evidence of, or any admission of, any liability, omission, or wrongdoing of any kind, and it shall not be offered or received into evidence or otherwise filed or lodged in any proceeding involving Claimant and the Village, Airy's and Burke except as may be necessary to prove and enforce its terms. It is expressly understood and agreed that neither this Agreement nor any consideration provided pursuant to this Agreement are to be construed as an admission of liability on the part of the Village, Airy's and Burke or regarding any and all claims and arising out of the Occurrence. To the contrary, the Village, Airy's and Burke have specifically denied any liability for any claims made by Claimant. It is further understood and agreed that the

consideration referenced herein is in full accord and satisfaction of the claims of Claimant and arising out of the Occurrence.

3. Cash Payment. Without admitting any liability to Claimant, the Village, Airy's and Burke shall pay to Claimant the sum of SEVEN THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$7,750.00). Said sum shall be delivered upon the signing of this Agreement by Claimant as soon thereafter as is practicable.
4.
 - A. Public Comment. Claimant agrees that he/she will not hold a press conference, issue a press release, or otherwise take affirmative steps to comment to the press or media, or publicize to any person or entity the settlement, the terms thereof or the purported property damage or the Occurrence.
 - B. Private Comment. Claimant agrees that he/she will not disclose any of the terms of this Agreement to any person or entity unless ordered to do so by order of a court of competent jurisdiction.
 - C. Enforcement. Claimant and the Village, Airy's and Burke expressly acknowledge and agree that any disparagement, comment or disclosure not expressly authorized by the Village, Airy's and Burke concerning the Agreement or the parties hereto, will have a serious and adverse effect on the parties hereto, and that such a breach will constitute a material breach of the entire Agreement. It is agreed by the parties that a breach of this Section 4 will result in a presumption of irreparable harm for the purpose of injunctive relief. The Village, Airy's and/or Burke shall be entitled to seek such relief as may be available at law or equity for breach of the Agreement as provided in Paragraph 13 – Failure of Performance.
5. Release and Discharge. Claimant and his or her agents, successors and assigns, hereby forever release and discharge the Village, Airy's and Burke and the Village's, Airy's' and Burke's former, current and future officials, trustees, officers, servants, employees, agents, successors, heirs, executors, administrators and assigns and any agencies, departments, divisions and employees, servants and agents of the Village, Airy's and Burke (collectively "Affiliates"), from any and all claims, injuries, demands, causes of actions, liabilities, legal claims, expenses or damages of whatever kind, nature or description whether known or unknown, suspected or unsuspected or hereafter discovered, whether in law or in equity, upon contract or tort, or under state or federal law or laws, or under common law or otherwise which he/she may have had, now has, or hereafter may have, or claim to have, or assert against them as a result of any actions or omissions of the Village, Airy's and Burke and/or Affiliates, which occurred or could have occurred on or prior to the date of this Agreement which relate in any manner to the purported property damage and the Occurrence.


6. Intent. It is the express intent of Claimant that this Agreement discharge all claims that he/she may have against the Affiliates, operate as a bar to any subsequent proceedings, whether known or unknown, existing now or in the future, pertaining to any claims arising from the purported property damage and the Occurrence. Claimant realizes that he/she may have sustained or incurred other losses, costs, expenses, damages, liabilities or claims, and the consequences thereof, which may or will result from the purported property damage and the Occurrence, and any actions of the Affiliates up to the date of the execution of this Agreement. Claimant expressly undertakes and assumes the risk that the settlement and underlying execution of this Agreement was made on the basis of mistake or mistakes, mutual or unilateral, as to the nature, extent, effects or consequences of any known or unknown, suspected or unsuspected, present or future, underlying losses or damages.
7. Governing Law. This Agreement and all performances hereunder shall be governed by the laws of the State of Illinois.
8. Integration. This Agreement constitutes the entire agreement of the parties and all prior representations and discussions are merged and incorporated herein. This Agreement may not be amended absent a writing evidencing such an amendment executed by all parties.
9. Waiver. No waiver of any covenant or obligation of this Agreement shall be effective unless contained in a writing signed by the party against whom such waiver is asserted.
10. No Prior Assignment. Claimant represents and warrants to the Village, Airy's and Burke that he and/or she is the sole and lawful owner of all right, title and interest in and to every claim and other matter that Claimant purports to release or compromise by this Agreement and that Claimant has not previously assigned or transferred, either by act or operation of law, to any party or entity any claim or other matters released by this Agreement. In the event that the Affiliates are subjected to a further claim by any person, firm, corporation or other entity, acting under any actual or purported lien, right or subrogation, or assignment, Claimant whose claim such person asserts will indemnify, defend and hold the Affiliates harmless from any such claim, suit or demand, and any loss, liability, damage (whether direct or consequential), or expense (including attorney's fees), which may be incurred by or asserted against the Affiliates.
11. Prohibition Against Assignment. The obligations, or any of them, of the parties to this Agreement shall not be assigned or delegated without the express consent of the parties.
12. Notice. Any notice required by this Agreement shall be made in writing to Claimant and to the Village, Airy's and Burke.

13. Failure of Performance. If a party at any time fails to perform its obligations under this Agreement and any other party seeks to or obtains judicial assistance in enforcing such obligations, the party or parties against whom the provisions are sought to be enforced shall pay, in addition to any damages, attorney's fees and related costs of enforcement if the party seeking enforcement is successful in obtaining the relief which it seeks in such judicial action.
14. Representation. All parties acknowledge and represent that in reviewing this Agreement and the terms of this Agreement, they have carefully read this Agreement, they understand its contents and that they have executed it as their own free and voluntary act.
15. Authorization. Claimant represents and warrants that he/she is legally competent to execute this Agreement and assumes full responsibility for and assumes the risk of all mistakes in fact or law regarding any damages, losses or injuries, whether disclosed or undisclosed.

Claimant:

VILLAGE OF ORLAND PARK, an Illinois
Municipal Corporation



KENNETH HUEMMER

By: 
Its: INTERIM VILLAGE MANAGER


HELEN MORGAN HUEMMER

AIRY'S, INC., an Illinois corporation

Address: 8640 W. 144th Place
Orland Park, IL 60462

By: 
Its: VICE PRESIDENT

BURKE, LLC, an Illinois limited liability company

By: 
Its: PRINCIPAL