

ORIGINAL

**RESOLUTION NO. R-2016-45**

**A RESOLUTION APPROVING  
THE SETTLEMENT AGREEMENT AND GENERAL RELEASE  
AND AUTHORIZING THE PAYMENT OF SETTLEMENT FUNDS  
IN THE GARMON VS. VILLAGE OF MAYWOOD LITIGATION  
(Settlement Amount: \$22,000)**

**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 litigation in *Garmon v. Maywood, et al.*, 16 CV 2094, which was filed in the United States District Court for the Northern District of Illinois against the Village and Office Jason Smith ("Smith"); and

**WHEREAS**, the Plaintiff has provided a signed Settlement Agreement and General Release ("Release") to the Village and Smith, releasing his claims 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 dismiss his lawsuit against the Village and Smith; 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 Twenty Two Thousand and No/100 Dollars (\$22,000.00).

**ADOPTED** this 20<sup>th</sup> day of December, 2016, 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 21<sup>st</sup> day of December, 2016.

  
\_\_\_\_\_  
VILLAGE PRESIDENT

**ATTEST:**

  
\_\_\_\_\_  
VILLAGE CLERK



**Exhibit 1**

**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

(attached)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

DIAMOND GARMON, a minor by and	)	
through his mother, Lucrisha McCallister,	)	Case No. 16 CV 2094
	)	
Plaintiff,	)	Judge Norgle
v.	)	Magistrate Judge Cox
	)	
P.O. JOHN DOE, P.O. SMITH, Individually,	)	Jury Demand
and the VILLAGE OF MAYWOOD,	)	
	)	
Defendants.	)	

**SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release (“Agreement”) is made and entered into this 28<sup>th</sup> day of Nov, 2016, by and between the following parties: DIAMOND GARMON (“Plaintiff”); Officer Jason Smith (“Defendant”); and the Village of Maywood (“Village”).

**PREAMBLE**

WHEREAS, Plaintiff filed a Complaint against Defendant, Officer John Doe and the Village on February 10, 2016 and said case presently is pending in the United States District Court, Northern District of Illinois, Eastern Division as Case No. 16 CV 2094 (the “Lawsuit”); and

WHEREAS, Plaintiff asserted 42 U.S.C. § 1983 and § 1988 claims and state law claims against the Defendant and the Village as set forth more particularly in the pleadings in the Lawsuit, which claims Defendant and the Village have denied and continue to deny; and

WHEREAS, it is now the desire of Plaintiff, Defendant and the Village 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, Defendant 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 Plaintiff, Defendant 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. Plaintiff, Defendant 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 Plaintiff may have against Defendant and/or the Village up to the date of this Agreement for any claims resulting from the allegations of this complaint of the incident occurring on January 7, 2016.

4. Dismissal of the Lawsuit. Plaintiff will dismiss with prejudice his lawsuit against Defendant and the Village in its entirety within 14 days of receipt of the settlement check.

5. Payment to Plaintiff. In return for Plaintiff's dismissal of all his claims and his lawsuit against Defendant and the Village in its entirety, the Village of Maywood agrees to pay Plaintiff the sum of **\$22,000.00, inclusive of attorneys fees and costs**, which sum shall be paid by a check issued by the Village of Maywood in the names of the Plaintiff, Diamond Garmon, and his law firm, Gregory E. Kulis & Associates, Ltd.

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 Defendant and the Village of Maywood, and its 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 Defendant and the Village against the enforcement of said liens and to assume all costs, expenses, and attorney fees related to said defense.

7. General Release and Covenant Not To Sue. Plaintiff, 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 Plaintiff has, had or may have against Defendant and the Village 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 January 7, 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, specifically claims under the United States Constitution, 42 U.S.C. § 1983, § 1988, and Illinois state law, 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 him. 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 Defendant and/or the Village and their respective personal representatives, agents, insurers, attorneys, executors, administrators, heirs, successors and assigns. Plaintiff further acknowledges and agrees that 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 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 Defendant and the Village 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 Defendant and the Village all his rights, titles, and interests in any relief from any proceeding that would be precluded by this release.

8. 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.

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

10. 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.

11. Entire Agreement. This Agreement represents the entire agreement between Plaintiff, Defendant and the Village 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 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 Diamond Garmon, Officer Jason Smith, and an authorized representative of the Village.



12. 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 he 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, Defendant or the Village, **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.

13. 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.

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

15. Knowing and Voluntary Signing of Binding Contract. Plaintiff 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. Plaintiff acknowledges that by signing this

Agreement, he is GIVING UP ALL CLAIMS AGAINST THE DEFENDANT AND THE VILLAGE.

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

17. 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.

DIAMOND GARMON

Diamond Garmon

Dated: 11-28-2016

OFFICER JASON SMITH

\_\_\_\_\_

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

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-2016-45**  
**A RESOLUTION APPROVING**  
**THE SETTLEMENT AGREEMENT AND GENERAL RELEASE**  
**AND AUTHORIZING THE PAYMENT OF SETTLEMENT FUNDS**  
**IN THE GARMON VS. VILLAGE OF MAYWOOD LITIGATION**  
**(Settlement Amount: \$22,000)**

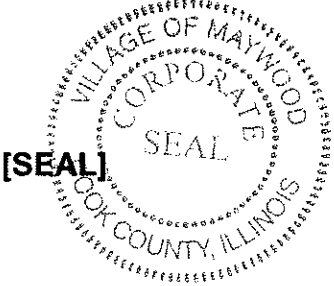
which Resolution was passed by the Board of Trustees of the Village of Maywood at a Regular Village Board Meeting on the 20<sup>th</sup> day of December, 2016, at which meeting a quorum was present, and approved by the President of the Village of Maywood on the 21<sup>st</sup> day of December, 2016.

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 21<sup>st</sup> day of December, 2016.



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