

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS**

CARILYNN KING MURAWSKI, Individually)
and as Special Administrator, and Special)
Representative of the Estate of Phyllis)
Manderson Davis, deceased,)
)
Plaintiff,)
)
v.)
)
CITY OF NAPERVILLE, et al.)
)
Defendants.)

Court No: 2017 L 000789

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into by and between Carilynn King Murawski, individually and as special administrator and special representative of the Estate of Phyllis Manderson Davis, (“Plaintiff”), and Defendants Tracey Heusinkveld and the City of Naperville (“the Settling Defendants”), (collectively, the “Settling Parties”).

RECITALS

WHEREAS, Plaintiff filed this lawsuit in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois, captioned *Carilynn King Murawski, Individually and as Special Administrator and Special Representative of the Estate of Phyllis Manderson Davis, deceased v. City of Naperville, an Illinois Municipal Corporation, and Tracy Heusinkveld*, Case No. 2017 L 000789 (the “Action”), alleging violations of rights protected by statute(s), regulation(s), or common law against the Settling Defendants; and,

WHEREAS, the Settling Defendants deny the allegations and deny any statutory, common law, constitutional, or regulatory violations, and affirmatively state that Plaintiff has failed to state a claim against them upon which relief can be granted; and,

WHEREAS, the Settling Parties agree that neither the fact of this Agreement, nor any term or provision hereof, shall be construed as an admission by any party of the merit or viability of any claim or defense asserted by any party to the Action, or an admission of liability or any wrongdoing by any of the Settling Defendants; and,

WHEREAS, it is the express intention of the Settling Parties that the purpose of this Agreement is to extinguish all of the claims made by Plaintiff so that the Plaintiff is forever precluded from presenting a claim or seeking damages against Settling Defendants, their agents, employers, employees, assigns, officers, directors or representatives, their respective insurance carriers, successors, predecessors, parent or affiliated companies, for personal injury, property

damage, constitutional injury, tort injury or any other damages allegedly incurred by the Plaintiff that in any way arises out of or from the occurrence; and,

WHEREAS, the Settling Parties desire to avoid further expense and to resolve the claims against the Settling Defendants, thereby terminating this Action;

IT IS HEREBY AGREED, by and among the Settling Parties as follows:

1. **INCORPORATION OF RECITALS.** The recitals set forth hereinabove are true and correct and are incorporated in this paragraph by this reference.
2. **DISMISSAL WITH PREJUDICE.** Within 30 days of the full execution of this Agreement, the Settling Parties shall file a Stipulation to Dismiss the Action with prejudice and without costs or expenses.
3. **COMPENSATION.** In consideration for the full and complete settlement of the claims against the Settling Defendants, Plaintiff shall receive the payment of the sum of Seven Hundred and Fifty Thousand Dollars (\$750,000), of which Seven Hundred Thousand Dollars (\$700,000) is apportioned to the wrongful death claims and Fifty Thousand Dollars (\$50,000) is apportioned to the survival act claims with the draft payable in accordance with an order entered by the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois approving settlement. It is expressly agreed that the Settling Defendants in their individual capacities shall not be responsible for payment of any portion of the Settlement Amount. The payments shall be made upon satisfaction of the conditions set forth in paragraph 4 below.
4. **ORDERS APPROVING SETTLEMENT.** Plaintiff acknowledges and agrees that the above payments shall not be made until: (a) full execution of this Agreement; and (b) the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois has entered an order approving the settlement. Plaintiff shall be responsible at her sole cost and expense for obtaining said order and making distributions pursuant to the order and directions of the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois. Plaintiff agrees that this Agreement is subject to and being executed in accordance with an order entered by the Circuit Court of the Eighteenth Judicial Circuit, DuPage County, Illinois. Said order is incorporated by reference herein. Plaintiff hereby agrees to defend, indemnify, and hold harmless the Settling Defendants from and against any claims relating to the approval of the settlement herein and/or orders of distribution of the settlement.
5. **NO ADDITIONAL BENEFITS.** No promise has been made to pay or give the Plaintiff any greater or further consideration other than as stated in this Agreement. All agreements, covenants, representations and warranties, express or implied, oral or written, of the Settling Parties hereto concerning the subject matter of this Agreement are contained in this Agreement. No other agreements, covenants, representations, or warranties, express or implied, oral or written, have been made by any Settling Party hereto to any other Settling Party concerning the subject matter of this Agreement. All prior and contemporaneous negotiations, possible and alleged agreements, representations, covenants, and warranties

among the Settling Parties concerning the subject matter of this Agreement are merged into this Agreement. This Agreement contains the entire agreements among the Settling Parties.

6. **GENERAL RELEASE OF CLAIMS.** Plaintiff, her respective heirs, agents, representatives, successors and assigns, hereby releases, discharges and forever frees Settling Defendants, and their respective members, officers, agents, attorneys, representatives, administrators, employees, insurers, heirs, successors, and assigns, and each and every one of them, including but not limited to Settling Defendants, from any and all claims, allegations, assertions, debts, dues, demands, liens, obligations, fees (including attorneys' fees), actions, or causes of action, of every kind or nature, at law, in tort, or in equity, which she may now have or claim to have, or which may hereinafter accrue, whether known or unknown, anticipated or unanticipated, for any act done or omitted to be done, from the beginning of time to the effective date of this Agreement, including, but not limited to, any act or omission that as was alleged or that could have been alleged in the lawsuit.

This release specifically includes, but is not limited to, rights or claims arising the Illinois and United States Constitutions, Illinois, or federal common law, and any other federal, state or local statute, law, ordinance, regulation or order. This General Release does not include any claims arising from an alleged breach of the terms of this Agreement. Plaintiff covenants never to institute or cause to be instituted, or assist in the institution of, any suit or action at law, equity, or otherwise, in any federal or state court, before any federal, state or local administrative agency, or before any tribunal, public or private, relating to or arising from any claim that has been released hereunder.

7. **RELEASE OF LIEN(S).** In addition to the general release of claims set forth in Paragraph 6 above, Plaintiff, her heirs, agents, representatives, successors and assigns, hereby agree to pay any and all outstanding liens of any kind that may exist, including but not limited to attorneys, former attorneys, physicians, hospitals, Medicare, Medicaid, and any and all other healthcare providers, from the total amount paid hereunder and further agree to defend, indemnify and forever hold harmless the Settling Defendants from any and all such lien or liens.
8. **CONTRACTUAL CAPACITY.** Plaintiff has entered into this Agreement voluntarily and knowingly and with the full and complete authority and contractual capacity to do so. Plaintiff has been provided the opportunity to consult with an attorney prior to executing this Agreement and has had ample opportunity to review its terms.
9. **EFFECTIVE DATE.** This Agreement will effective as of the date by which all Parties have signed and executed the Agreement.
10. **AMENDMENTS.** No provisions or requirements expressed in this Agreement may be altered, modified, changed or canceled after the effective date of this Agreement, except upon the express written consent of the Plaintiff and the City of Naperville.

11. **EFFECT OF AGREEMENT.** This Agreement shall inure to the benefit of and bind the Plaintiff, the City of Naperville and their heirs, executors, agents, representatives, assigns and successors.
12. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of Illinois.
13. **EXECUTION.** This Agreement may be executed in multiple counterparts, and a set of counterparts bearing the signatures of each party hereto shall constitute the Agreement as fully as if the parties had signed a single document. The parties shall accept facsimile or electronic copies of this Agreement as if original copies.
14. **NO ADMISSION OF LIABILITY.** This Agreement shall not in any way be construed or used as an admission of any wrongdoing or liability of any kind or nature by the Settling Defendants, the same being denied. This Agreement shall not serve as evidence or notice of any wrongful or unconstitutional conduct by or on the part of the Settling Defendants in any court or other proceeding of any kind. The Settling Parties acknowledge and agree that this settlement is being made solely to avoid the uncertainty and expense of litigation and to buy the peace between the parties.
15. **SEVERABILITY.** Should any provision of the Agreement be declared illegal by a court of competent jurisdiction, then said provision shall be deleted from this Agreement to the extent it violates the law, and the remaining provisions in this Agreement shall remain in full force and effect so long as the parties' intent in entering into this Agreement can still be met.
16. **NON-PRECEDENTIAL EFFECT.** The terms of this Agreement are non-precedential, and this Agreement will not be used for any purpose other than to resolve this dispute.

IN WITNESS HEREOF, the Settling Parties have executed this Agreement, individually or by their duly authorized representatives, as indicated below.

PLAINTIFF

CITY OF NAPERVILLE

 CARILYNN KING MURAWSKI
 INDIVIDUALLY AND AS SPECIAL
 ADMINISTRATOR AND SPECIAL
 REPRESENTATIVE OF THE ESTATE
 OF PHYLLIS MANDERSON DAVIS,
 DECEASED

 DOUG KRIEGER
 CITY MANAGER

Date: _____

Date: _____

 ANTHONY RUSSO

PLAINTIFF'S ATTORNEY

Date: _____