

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE EXECUTION OF
A SETTLEMENT AGREEMENT AND MUTUAL RELEASE
REGARDING PROPERTY LOCATED AT 223 WESTFIELD WAY**

WHEREAS, the Village of Barrington Hills (hereinafter the “Village”) has been engaged in litigation involving the property located at 223 Westfield Way in Case No. 2015 CV 04510 currently pending in the U.S. District Court for the Northern District; and

WHEREAS, on June 22, 2015, the President and Board of Trustees authorized the settlement of said litigation on terms proposed by Counsel for the Village; and

WHEREAS, the terms authorized for settlement of the litigation are not set forth in a written agreement captioned Settlement Agreement and Mutual Release, attached hereto as Exhibit “A;” and

WHEREAS, the President and Board of Trustees of the Village have determined that the terms of the agreement are acceptable to the Village and that it is therefore in the interest of the Village and its residents for the Village to resolve this litigation under terms of the Settlement Agreement and Mutual Release set forth in Exhibit “A.”

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Barrington Hills, located in the Counties of Cook, Kane, Lake and McHenry, Illinois, as follows:

SECTION ONE: The recitals set forth above are incorporated herein and made a part hereof.

SECTION TWO: The Village President is hereby authorized and directed to execute on behalf of the Village of Barrington Hills, the Settlement Agreement and Release attached hereto and incorporated herein by reference as Exhibit “A,” and the

Village Clerk to attest thereto.

SECTION THREE: This Resolution shall take effect immediately upon its passage and approval as provided by law.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Barrington Hills, Illinois, this 24th day of August, 2015.

APPROVED:

Village President

ATTEST:

Village Clerk

Ayes: _____

Nays: _____

Absent: _____

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is entered into as of August 10, 2015 by and between Village of Barrington Hills (the "Village"), Robert Kosin ("Kosin"), Donald Schuman ("Schuman")(collectively the "Village Parties" where applicable), and Najamul Hasan, Nausheen Hasan, individually and in their capacity as beneficiaries of land trust agreement dated August 9, 2007, in favor of Associated Bank, N.A., known as trust no. HTB1986 (collectively the "Homeowner Parties")(the Village Parties and Homeowner Parties are collectively referred to as the "Parties" where applicable), as follows:

RECITALS

A. WHEREAS, Homeowner Parties are the owners/beneficial owners of certain residential property located in the Village at 223 Westfield Way, Barrington Hills, Illinois (the "Property");

B. WHEREAS, Kosin is the Village Administrator and Schuman is the Village Building Officer.

C. WHEREAS, on December 17, 2007, the Village enacted a Tree Preservation Ordinance (the "Ordinance"), as amended. The Ordinance regulates the preservation, destruction, removal, and planting of certain trees known as heritage trees ("Heritage Trees") as defined in the Ordinance on property in the Village and delineates an approval process set forth in the Ordinance.

D. WHEREAS, a dispute arose between Homeowner Parties and the Village regarding Homeowner Parties' compliance with the Ordinance and the issuance of an occupancy permit from the Village for the residence located on the Property.



E. WHEREAS, on May 21, 2015, Homeowner Parties filed a Complaint against Village Parties relating to the dispute and Ordinance, captioned as *Najamul Hasan, Nausheen Hasan, individually and in their capacity as beneficiaries of land trust agreement dated August 9, 2007, known as trust no. HTB1986 v. Village of Barrington Hills, Robert Kosin, and Donald Schuman*, Case No. 15-cv-4510 in the district court for the Northern District of Illinois, Eastern Division (the "Lawsuit").

F. WHEREAS, in the interest of avoiding the costs and expenses in the Lawsuit and in order to buy the peace, the Parties have agreed to settle the Lawsuit.

G. WHEREAS, the Parties desire to settle fully and finally any and all claims which were raised or which could have been raised in the Lawsuit, with each of the Parties expressly denying any liability to the other Party.

H. WHEREAS, in order to resolve the issue raised by the Homeowners, in their request for a preliminary injunction, the Village Parties issued a permanent occupancy permit which allowed the Homeowners to occupy and reside in their residence as of June 3, 2015.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

AGREEMENT

1. Recitals

The above Recitals shall be deemed and considered an integral part of this Agreement and shall have the same force and effect as the following provisions of this Agreement.

2. Homeowner Parties' Tree Preservation Plan

On or before September 15, 2015, Homeowner Parties shall complete in full the installation plan for the 48 Heritage Trees of species and numbers set forth in the attached Tree

Replacement Plan (attached hereto as Exhibit A) including 17 Swamp White Oak trees, 9 Redmond Linden, 5 White Oak and 17 Sugar Maple trees. The Heritage Trees installed shall be 3"-3.5" nursery measured, 6" above grade diameter and in the locations set forth on the Village-approved Site Plan attached hereto as Exhibit B. Once planted, Homeowner Parties agree to maintain all of the trees and to replace any tree that dies within 3 planting seasons of installation with another Heritage Tree as defined in the Ordinance. The Parties agree that the requirement to replace Heritage Trees that die within 3 planting seasons shall not apply to the 12 trees planted in Homeowner Parties back yard. Upon timely completion of the installation plan as set forth in the Site Plan, the Village (through its counsel) shall tender \$2,847.36 to Homeowner Parties through their respective counsel. Payment shall be made within 10 days from the date of completion of the installation plan and notice of completion to the Village (through its counsel).

3. Dismissal of the Lawsuit

Upon Village Parties' tender of the payment referenced in the preceding section, the Parties shall file a stipulation with the Court dismissing the Lawsuit with prejudice and without fees/costs to either party unless the Lawsuit has been previously dismissed by the Court.

4. Mutual Release

Homeowner Parties, both collectively and individually, their heirs, executors, agents, administrators, subsidiaries, parents, successors, predecessors, assigns, attorneys, personal representatives, officers, directors, members, managers, shareholders, employees, beneficiaries, insurers and affiliates hereby release and forever discharge the Village Parties, both collectively and individually, their heirs, executors, agents, administrators, subsidiaries, parents, successors, predecessors, assigns, attorneys, personal representatives, officers, directors, partners, members, shareholders, employees, insurers and affiliates from any and all claims, liens, causes of action,



complaints, including but not limited to any claim of a constitutional deprivation regarding the Ordinance, the constitutionality of the Ordinance, and/or the Village's actions regarding the Ordinance (including but not limited to any equal protection challenge, class of one claim, and/or 1983 claims), promissory estoppel, equitable estoppel, misrepresentation, fraud, breach of representation, damages, injuries, indemnity, contribution, loss of earnings or earning capacity, loss of profits, liabilities, expenses, fees, costs, actions, lawsuits, debts, reimbursements, including attorneys' fees, that the Homeowner Parties have or believe they have against the Village Parties, whether known or unknown, for any losses, loss of profits of any kind, damages, attorneys' fees, injuries, contribution, indemnification, liabilities, expenses, reimbursements, fees, costs, or compensation of any and every kind, whether anticipated or unanticipated, known or unknown, resulting from, arising out of, connected directly or indirectly in any way, or that refer, pertain or involve: (a) the Lawsuit; and (b) without in any manner limiting sub-paragraph (a), any and all matters or claims that occurred or could have occurred or that were set forth or could have potentially been set forth or that refer, pertain or relate to the Lawsuit or the dispute raised in the Lawsuit regarding the Ordinance. Homeowner Parties hereby acknowledge that the intent of the scope of this release is that they are generally releasing the Village Parties from any and all liability regarding the Lawsuit and/or the dispute raised in the Lawsuit regarding the Ordinance.



Other than claims relating to possible violations of the Village's ordinances, laws, codes or statutes, Village Parties, both collectively and individually, their heirs, executors, agents, administrators, subsidiaries, parents, successors, predecessors, assigns, attorneys, personal representatives, officers, directors, members, managers, shareholders, employees, beneficiaries, insurers and affiliates hereby release and forever discharge the Homeowner Parties, both

collectively and individually, their heirs, executors, agents, administrators, subsidiaries, parents, successors, predecessors, assigns, attorneys, personal representatives, officers, directors, partners, members, shareholders, employees, insurers and affiliates from any and all claims, liens, causes of action, and complaints, including but not limited to any and all claims of damages, injuries, indemnity, contribution, loss of earnings or earning capacity, loss of profits, liabilities, expenses, fees, costs, actions, lawsuits, debts, reimbursements, including attorneys' fees, that the Village Parties have or believe they have against the Homeowner Parties, whether known or unknown, for any losses, loss of profits of any kind, damages, attorneys' fees, injuries, contribution, indemnification, liabilities, expenses, reimbursements, fees, costs, or compensation of any and every kind, whether anticipated or unanticipated, known or unknown, resulting from, arising out of, connected directly or indirectly in any way, or that refer, pertain or involve: (a) the Lawsuit; and (b) without in any manner limiting sub-paragraph (a), any and all matters or claims that occurred or could have occurred or that were set forth or could have potentially been set forth or that refer, pertain or relate to the Lawsuit or the dispute raised in the Lawsuit regarding the Ordinance. Village Parties hereby acknowledge that the intent of the scope of this release is that they are generally releasing the Homeowner Parties from any and all liability regarding the Lawsuit and/or the dispute raised in the Complaint regarding the Ordinance.



With respect to any claims related to violations of Village ordinances, laws, codes or statutes, known or unknown, which may exist at the time of execution of this Agreement, notwithstanding anything to the contrary contained in this Agreement, , the Parties acknowledge and agree that the Village's release to Homeowner Parties does not apply to claims related to violations of applicable ordinances, laws, codes or statutes that were not raised in the Lawsuit even if they existed prior to execution of this Agreement. Notwithstanding anything to the

state or federal courts located in Chicago, Illinois. Illinois law shall apply to the application, construction and enforcement of this Agreement, and all parties hereto expressly do hereby waive trial by jury in any action, complaint, proceeding or counterclaim brought by any the Homeowner Parties against the Village Parties or by any of the Village Parties against the Homeowner Parties regarding any matter whatsoever arising out of or in any way connected with this Agreement. The provisions of this Agreement are severable, and, if any provision is declared invalid by a court having proper jurisdiction, the invalidity of any provision hereof shall not invalidate any other provision. All agreements and understandings between the parties are embodied and expressed herein and the terms of the Agreement are contractual and not mere recital. This Agreement was prepared and reviewed by attorneys for all Parties before being signed and therefore none of the terms and provisions of this Agreement should be construed against any of the individual parties to the Agreement.

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contrary contained in this Agreement, the Parties agree that the Village is in no way precluded from enforcing any such violations of applicable laws, ordinances, codes or statutes except for pre-existing Heritage Tree Ordinance issues, all of which have been resolved herein.

5. Capacity of the Parties

Each party represents and warrants that it has full capacity and authority to settle, compromise and release its claims against one another and to enter into this Agreement and that no person or entity has acquired, or will in the future acquire or have any right to assert, against any person or entity released by this Agreement any portion of that Party's claims released herein.

The Parties represent and warrant that no other person, entity or party has, or has had, any interest, claims, demands, obligations, or causes of action referred to in this Agreement, except as otherwise provided herein and that the Parties have the sole right and exclusive authority to execute this Agreement and that the Parties have not sold, assigned, transferred or conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement.



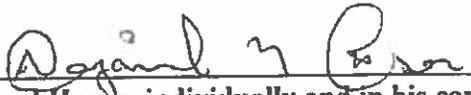
6. Execution of Agreement

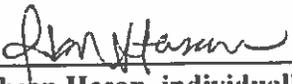
The Parties agree that this Agreement may be signed in counterparts, each of which will be deemed to be an original. Signatures via pdf or facsimile shall also be deemed to be original.

7. Miscellaneous

In the event litigation is necessary to enforce the terms of this Agreement against a breaching party, then the non-breaching party in such litigation shall be entitled to recover its reasonable attorneys' fees and costs from the breaching party. In the event of litigation to enforce the terms of this Agreement, any such litigation shall only be properly venued in the

ALL PARTIES SIGNING THIS AGREEMENT HAVE COMPLETELY READ THE TERMS OF THIS AGREEMENT AND FULLY UNDERSTAND THEM AND VOLUNTARILY ACCEPT THEM FOR THE PURPOSE OF MAKING A FULL AND FINAL COMPROMISE, ADJUSTMENT AND SETTLEMENT OF ALL CLAIMS, DISPUTED OR OTHERWISE, ON ACCOUNT OF THE MATTERS AND THINGS ABOVE MENTIONED.


Najamul Hasan, individually and in his capacity as beneficiary of a land trust under agreement dated August 9, 2007, in favor of Associated Bank, N.A., and known as trust no. HTB1986


Nausheen Hasan, individually and in her capacity as beneficiary of a land trust under agreement dated August 9, 2007, in favor of Associated Bank, N.A., and known as trust no. HTB1986

ASSOCIATED BANK, N.A., AS TRUSTEE OF A LAND TRUST UNDER AGREEMENT DATED AUGUST 9, 2007, IN FAVOR OF ASSOCIATED BANK, N.A., AND KNOWN AS TRUST NO. HTB1986

By: _____
Name: _____
Its: _____

VILLAGE OF BARRINGTON HILLS,
a municipal corporation,

By: _____
Name: _____
Its: _____

Robert Kosin

Donald Schuman

Aug 1, 2015

223 Westfield Way Heritage Tree Replacement

The attached plan notes in red the potential estimated new tree planting locations. Exact locations are to be determined in the field. Due to nursery availability, the exact number of each species of trees cannot be guaranteed. The plan shows 48 trees to be planted. Sizes will range from 3" to 3.5", measured 6" above grade, per nursery standards. The species and approximate (based on species availability but totaling 48) quantities of these trees will be of the following:

<u>SPECIES</u>	
SWAMP WHITE OAK	17
REDMOND LINDEN (TILIA AMERICANA)	9
WHITE OAK	5
SUGAR MAPLE	17

Totaling 48 trees.

The new trees are to be planted no later than September 15th, 2015

Additionally attached is a tree care program agreement from The Davey Tree Expert Company which the owner has agreed to.

To supply, install, and maintain (for 3 years) these 48 trees:	\$10,244.00 Trees
	\$5,200.00 Installation
	\$1,550.00 Management
	\$850.00 Tree plan, Time and Services Rendered
	\$1,920.00 Tree Care 2015
	\$1,485.00 Tree Care 2016
	\$1,530.00 Tree Care 2017
	\$22,779.00 TOTAL
	\$474.56 Per Tree (48 trees)





Proven Solutions for a Growing World

The Davey Tree Expert Company
569 Rock Road Drive
East Dundee, IL 60118
Phone: (847) 426-8889 Fax: (847) 426-8556
Email: matt.schaefer@davey.com



Client

6/10/2015

NORTH STAR TRUST
ATTN NAJ HASAN
223 Westfield Way
Barrington, IL 60010-9335

Proposal #: 00862250-00002779
Account #: 3820223
Mobile: (847) 293-8003
Email: nhasan1488@aol.com

Tree and Shrub Fertilization

		Price	Tax	Total
<input type="checkbox"/> Fert w/ Arbor GreenPRO (1yr)	Late Spring	\$960.00		\$960.00

2015 SEASON

For 48 newly planted heritage trees to promote health and vigor. Our organic slow-release fertilizer lasts one year. For the 2015 season only, Zeba will be added to the fertilizer mixture. Zeba amends the soil to increase survival rate, promote greater root and biomass development and plant yield through improved water utilization.

Plant Health Care

		Price	Tax	Total
<input type="checkbox"/> Inspection And Foliage Treatment	Late Spring	\$480.00		\$480.00

2015 SEASON

For 48 newly planted heritage trees to control borers and leaf eating and sap sucking insects.

<input type="checkbox"/> Inspection And Foliage Treatment	Summer	\$480.00		\$480.00
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2015 SEASON

For 48 newly planted heritage trees to control borers and leaf eating and sap sucking insects.

Yes, please schedule the services marked above.

Handwritten initials/signature

ACCEPTANCE OF PROPOSAL: The above prices and conditions are hereby accepted. You are authorized to do this work as specified. I am familiar with and agree to the terms and conditions appended to this form. All deletions have been noted. I understand that once accepted, this proposal constitutes a binding contract. This proposal may be withdrawn if not accepted within 30 days.

Matt Schaefer

Matt Schaefer ISA Certified Arborist IL-0448A

Authorizing Signature

Date

Client Care Guarantee

We use quality products that are administered by trained personnel. We guarantee to deliver what we have contracted to deliver. If we do not, we will work with you until you are satisfied, or you will not be charged for the disputed item. Our Client Care Guarantee demonstrates our commitment to creating lifelong client relationships.

Tree Pruning and Surgery

PRUNING: Performed by trained arborists using industry and Tree Care Industry Association (TCIA) approved methods.
TREE REMOVAL: Removal to within 6" of ground level and cleanup of debris.
STUMP REMOVAL: Mechanical grinding of the visible tree stump to at or just below ground level. Stump area will be backfilled with stump chips and a mound of remaining chips will be left on site unless otherwise stated in the contract. Chip removal, grading and soil backfill are available.
CLEAN-UP: Logs, brush, and leaves, and twigs large enough to rake are removed. Sawdust and other small debris will not be removed.
CABLING/BRACING: Cabling and bracing of trees is intended to reduce damage potential. It does not permanently remedy structural weaknesses, is not a guarantee against failure and requires periodic inspection.

Tree and Shrub Fertilization

Our advanced formula, Arbor Green PRO, works with nature to fertilize without burning delicate roots, building stronger root systems and healthier foliage. It contains no chlorides or nitrates. It is injected into the root zone and the nutrients are gradually released over time. Research and experience shows the dramatic benefits Arbor Green PRO provides: greater resistance to insect and disease, greater tolerance to drought stress, increased vigor, and healthier foliage.

Tree and Shrub Plant Health Care

PRESCRIPTION PEST MANAGEMENT: Customized treatments to manage disease and insect problems specific to plant variety and area conditions. Due to the short term residual of available pesticides, repeat applications may be required.
INSECT MANAGEMENT: Inspection and treatment visits are scheduled at the proper time to achieve management of destructive pests. Pesticides are applied to label specifications.
DISEASE MANAGEMENT: Specific treatments designed to manage particular disease problems. Whether preventative or curative, the material used, the plant variety being treated, and the environmental conditions all dictate what treatment is needed.
EPA approved materials will be applied in accordance with State and Federal regulations.

Lawn Care

FERTILIZER AND MECHANICAL SERVICES: Balanced fertilizer treatments applied throughout the growing season help provide greener turf color and denser root development. To help bring about a better response to these applications, we also provide aeration, lime, overseeding, and lawn renovation.
WEED CONTROL AND PEST MANAGEMENT: Broadleaf weed control is spot-applied during the active growing periods of the year. It is not broadcast over the entire lawn. Granular weed management may be broadcast. We also offer pre-emergent crabgrass management in the spring and, if needed, a post-emergent application later in the year. Our curative insect management is aimed to reduce chinchbugs, and webworms, and billbugs. We also offer a grub management application. Disease management materials and treatments are matched to particular disease problems. This usually requires repeat applications.

Other Terms and Contract Conditions

INSURANCE: Our employees are covered by Worker's Compensation. The company is insured for personal injury and property damage liability. Proof of insurance can be verified by requesting a copy of our Certificate of Insurance.
WORKING WITH LIVING THINGS: As trees and other plant life are living, changing organisms affected by factors beyond our control, no guarantee on tree, plant or general landscape safety, health or condition is expressed or implied and is disclaimed in this contract unless that guarantee is specifically stated in writing by the company. Arborists cannot direct or anticipate every condition or event that could possibly lead to the structural failure of a tree or guarantee that a tree will be healthy or safe under all circumstances. Trees can be managed but not controlled. When elevated risk conditions in trees are observed and identified by our representatives and a contract has been signed to proceed with the remedial work we have recommended, we will make a reasonable effort to proceed with the job promptly. However, we will not assume liability for any accident, damage or injury that may occur on the ground or to any other object or structure prior to us beginning the work. Site inspections do not include internal or structural considerations unless so noted. Unless otherwise specified, tree assessment will not include investigations to determine a tree's structural integrity or stability. We may recommend a Risk Assessment be conducted for an additional charge.
TREE CARE STANDARDS: All work to be performed in accordance with current American National Standards Institute (ANSI) Standard Practices for Tree Care Operations.
OWNERSHIP OF TREES/PROPERTY: Acceptance constitutes a representation and warranty that the trees and property referenced in this quote are either owned by the signer or that written permission has been received to work on trees which are not on the signer's property.
TIME & MATERIAL (T&M): Jobs performed on a T&M basis will be billed for the time on the job (not including lunch break), travel to and from the job, and materials used.
BILLING & SALES TAX: All amounts deposited with us will either be credited to your account or applied against any amounts currently due. Our invoices are due net 30 days from invoice date. Services may be delayed or corrected due to outstanding account balances. Sales tax will be added as per local jurisdiction. Clients claiming any tax exempt status must submit a copy of their official exempt status form including their exemption number in order to waive the sales or capital improvement tax.
PAYMENT: We accept checks and credit cards. Credit card payments may be made online at our web site. Paying by check authorizes us to send the information from your check to your bank for payment.
UNDERGROUND PROPERTY: We are not responsible for any underground property unless we have been informed by you or the appropriate underground location agency.
SCHEDULING: Job scheduling is dependent upon weather conditions and work load.

