

RESOLUTION NO. 19 111

RESOLUTION AUTHORIZING THE VILLAGE PRESIDENT  
TO EXECUTE A SETTLEMENT AGREEMENT AND MUTUAL RELEASE  
IN THE AMOUNT OF \$34,000

WHEREAS, the VILLAGE OF WHEELING, Lake and Cook Counties, Illinois (the "Village") is a home rule municipality, pursuant to Article 7, Section 6 of the Illinois Constitution of 1970; and

WHEREAS, Plaintiff John Kraft ("Plaintiff"), filed an action entitled *John Kraft v. Village of Wheeling, et al.*, Case Number 2018 CH (the "Lawsuit"), in the Circuit Court of Cook County, Illinois; and

WHEREAS, Plaintiff's alleged cause of action arises out of the Village's response to an Illinois Freedom of Information Act request; and

WHEREAS, the Village Board, without any admission of liability, deems that it is in the Village's best interest to amicably resolve any and all disputes, claims, actions or causes of action related to the Lawsuit;

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF WHEELING, COOK AND LAKE COUNTIES, ILLINOIS, as follows:

**SECTION 1:** Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

**SECTION 2:** The Board of Trustees of the Village of Wheeling approves, authorizes and directs the Village President to execute the "Settlement Agreement and Mutual Release" (the "Agreement") in substantial conformity with the Agreement attached hereto as **EXHIBIT A** and all related documents. All final changes are subject to the approval of the Village Manager and Village Attorney.

**SECTION 3:** That this Resolution shall take effect from and after its adoption and approval.

Trustee Ruffatto moved, seconded by Trustee Papantios,  
that Resolution No. 19- 111 be adopted.

President Horcher

Ay

Trustee Ruffatto

Ay

Trustee Krueger

Ay

Trustee Vito

Ay

Trustee Lang

Ay

Trustee Vogel

Ay

Trustee Papantios

Ay

ADOPTED this 16<sup>th</sup> day of September, 2019, by the President and Board of Trustees of the Village of Wheeling, Illinois.

ATTEST:

Elaine E. Simpson  
Elaine E. Simpson, Village Clerk



Patrick Horcher  
Patrick Horcher, Village President

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

<b>JOHN KRAFT,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>No. 2018 CH 04518</b>
	)	
<b>VILLAGE OF WHEELING,</b>	)	
	)	
<b>Defendant.</b>	)	

**SETTLEMENT AGREEMENT**

This Settlement Agreement (hereinafter the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the following parties: John Kraft ("Plaintiff") and the Village of Wheeling ("Defendant").

**PREAMBLE**

**WHEREAS,** Plaintiff filed the above-captioned Complaint against the Defendant on April 6, 2018, and said case is presently pending in the Circuit Court of Cook County, County Department, Chancery Division (hereinafter the "Lawsuit"); and

**WHEREAS,** Plaintiff asserts various claims against Defendant set forth more particularly in the pleadings in the Lawsuit, which claims Defendant denies and continue to deny;

**WHEREAS,** it is now the desire of Plaintiff and Defendant to fully and finally resolve and settle the Lawsuit, 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 and Defendant.

2. Compromise and Settlement. This Agreement constitutes the compromise and settlement of disputed claims that is made solely to avoid further costs of litigation. Nothing

contained herein, nor any actions taken by Plaintiff or Defendant 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 FOIA Claims. Plaintiff and Defendant intend this Agreement to be a complete and total resolution and settlement of any and all FOIA claims related to the Lawsuit, whether asserted or not asserted, known or unknown, that Plaintiff may have against Defendant or that Defendant may have against Plaintiff up to the date of this Agreement. No other claims are released.

4. Dismissal of the Lawsuit. Plaintiff shall dismiss with prejudice the Lawsuit in its entirety against Defendant in exchange for payment of the settlement funds referenced in this Agreement.

5. Payment and Additional Consideration to Plaintiff. In return for Plaintiff's dismissal of all his claims and his Lawsuit against the Defendant in its entirety and with prejudice, the Defendant agree to pay the Plaintiff and his attorneys **Thirty Four Thousand and No/100 Dollars (\$34,000.00)**. To the extent the payment amount includes attorneys' fees under the Freedom of Information Act, 5 ILCS 140/1 et. seq., Plaintiff and Defendant acknowledge that this amount is a compromise and does not represent the full amount to which Plaintiff contends it would be entitled as a reasonable attorney fee award had it filed a fee petition with the Court. Plaintiff waives his right, if any, to collect any additional attorneys' fees incurred in this litigation from the Defendant.

6. Plaintiff's Responsibility for Liens. Except as otherwise provided in this Agreement, Plaintiff agrees to assume responsibility for all outstanding liens of any kind, those known and unknown, including but not limited to attorney liens, from the proceeds of this settlement. In the event that any liens are enforced which have been served upon Plaintiff, Plaintiff agrees to hold harmless Defendant, and its trustees, officers, administrators, employees, directors, agents, successors, executors, legal and/or personal representatives of any kind, insurers, and assigns for all said liens. Plaintiff also agrees to defend Defendant against the enforcement of said liens and to assume all costs, expenses, and attorneys' fees related to said defense. Plaintiff's obligations under this provision are contingent upon Defendant providing notice to Plaintiff within 10 business days, granting Plaintiff complete control of the matter, and cooperating fully with Plaintiff in the matter.

7. Release and Covenant Not To Sue. Plaintiff, on behalf of himself, 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, and covenants not to sue, Defendant, its trustees, officers, administrators, employees, directors, agents, successors, executors, legal and/or personal representatives of any kind, insurers, and assigns from or for any and all claims, charges, liabilities, debts, demands, grievances and causes of action pursuant to the allegations related to the Lawsuit up to the date of this Agreement, 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 up to the date of this Agreement. Defendant similarly agree that they irrevocably and unconditionally covenant not to sue Plaintiff for any and all claims, charges, liabilities, debts, demands, grievances and causes of action pursuant to the Freedom of Information Act up to the date of this Agreement, whether at law or in equity, whether accrued, contingent or inchoate, and whether known or unknown, suspected or unsuspected, or otherwise which Defendant have or may have up to the date of this Agreement.

8. Choice of Law; Savings Provision. This Agreement will be governed by Illinois law without regard to the choice of law provisions thereof. 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.

9. Entire Agreement. This Agreement represents the entire agreement between Plaintiff and Defendant with respect to the matters set forth herein and supersedes all prior agreements or understandings, if any, between the parties. The parties acknowledge that except for the explicit provisions of this Agreement, no promises or representations of any kind have been made to induce the party to enter into this Agreement. No modification of this Agreement can be made except in writing and signed by Plaintiff and a representative of the Defendant.

10. For Settlement Only. This Agreement is entered into for settlement purposes only and represents the compromise of disputed claims as set forth in this Agreement.

11. Representations and Warranties By All Parties. The parties represent and warrant as to himself, herself or itself that: (a) he, she or it has the capacity, full power and authority to enter into this Agreement; (b) the individuals signing on behalf of the Wheeling Police Department and Village of Wheeling are authorized to do so; (c) he, she or it has not assigned, encumbered or in any manner transferred all or any portion of the claims covered by this Agreement; (d) there are

no 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.

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

13. Knowing and Voluntary Signing of Binding Contract. The parties represent and warrants that they have read this Agreement and understands all of its terms, and execute this Agreement voluntarily and without duress or undue influence, and with full knowledge of its significance, intending to be legally bound.

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

15. 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 (1) Agreement.

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

JOHN KRAFT

[Redacted Signature]

Dated:

9-19-2019

VILLAGE OF WHEELING

[Signature]

Dated:

September 16, 2019

