

VILLAGE OF BRADLEY

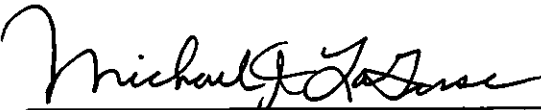
RESOLUTION NO. R-1-14-1

**A RESOLUTION APPROVING A SETTLEMENT AGREEMENT AND
MUTUAL RELEASE WITH BOND SAFEGUARD INSURANCE COMPANY**

ADOPTED BY THE
BOARD OF TRUSTEES
VILLAGE OF BRADLEY

This 13 day of JANUARY, 2014

CERTIFICATE:



Michael J. LaGesse, Village Clerk

RESOLUTION NO. R-1-14-1

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT AND MUTUAL RELEASE WITH BOND SAFEGUARD INSURANCE COMPANY

WHEREAS, the Village of Bradley (“Village”) is an Illinois municipal corporation, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.; and

WHEREAS, Kennedy Homes Limited Partnership by Kennedy Construction, Inc. (“Kennedy”) was required to make certain improvements in the subdivision commonly known as Kennedy Pointe of Summerfield Phase I, and submitted a performance bond executed by Bond Safeguard Insurance Company (“Bond Safeguard”) and known as Subdivision Bond, Bond No. 5008047, dated March 23, 2008, in the principal amount of \$2,500,000, which principal amount was later reduced to \$866,000 (hereinafter “Phase I Performance Bond”); and

WHEREAS, Kennedy was required to make certain improvements in the subdivision known as Kennedy Pointe of Summerfield Phase II, and submitted a performance bond executed by Bond Safeguard and known as Subdivision Bond, Bond No. 5021807, dated October 19, 2006, in the principal amount of \$961,156.00 (hereinafter “Phase II Performance Bond”); and

WHEREAS, the Village commenced a lawsuit in the Circuit Court of the Twenty First Judicial Circuit, Kankakee County, Illinois, as Case No. 2012 L 133, in which the Village seeks recovery against Bond Safeguard and others under the aforesaid Phase I Performance Bond and Phase II Performance Bond, and which case remains pending; and

WHEREAS, the Village and Bond Safeguard have reached a settlement agreement as to all matters related to the Phase I Performance Bonds and the Phase II Performance Bonds and as to all matters raised in the above referenced litigation; and

WHEREAS, the President and Board of Trustees have determined that it is in the best interests of the Village to settle the litigation on the terms and conditions as set forth in the Settlement Agreement, attached hereto and incorporated herein as Exhibit A.

NOW THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Bradley, as follows:

Section 1. Recitals Incorporated. The above recitals are incorporated herein by reference as though fully set forth.

Section 2. Settlement Agreement Approved. The Settlement Agreement and Mutual Release between the Village and Bond Safeguard is approved in substantially the form as attached in Exhibit A, subject to the review and approval of the Village Attorney, and subject to the approval of and execution of a settlement agreement between the Village and Summerfield South, LLC.

Section 3. Execution of Agreement. The Village President and the Village Clerk are directed to execute the Settlement Agreement on behalf of the Village in substantially the form attached, subject to the review and approval of the Village Attorney, and are authorized to execute any and all such other documents as may be necessary to effectuate the terms and intent of the Settlement Agreement.

Section 4. Severability and Repeal of Inconsistent Ordinances and Resolutions. If any section, paragraph, clause or provision of this Resolution shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Resolution. All existing resolutions of the Village of Bradley are hereby repealed insofar as they may be inconsistent with the provisions of this Resolution.

Section 5. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED this 13 day of JANUARY, 2014

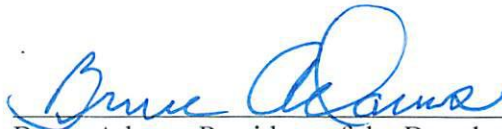
TRUSTEES:

Jerry Balthazor:	Aye - <input checked="" type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input type="checkbox"/>
Robert Redmond:	Aye - <input checked="" type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input type="checkbox"/>
Lori Gadbois:	Aye - <input checked="" type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input type="checkbox"/>
George Golwitzer:	Aye - <input checked="" type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input type="checkbox"/>
Eric Cyr:	Aye - <input checked="" type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input type="checkbox"/>
Melissa Carrico:	Aye - <input checked="" type="checkbox"/>	Nay - <input type="checkbox"/>	Absent - <input type="checkbox"/>

Bruce Adams: Aye - Nay - Absent -

TOTALS: AYE - 6 NAY - 0 ABSENT - 0

APPROVED this 13 day of JANUARY, 2014



Bruce Adams, President of the Board of Trustees of the Village of Bradley

ATTEST:



Michael J. LaGesse, Village Clerk

EXHIBIT A

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Agreement") is executed on the date last written below, by and between the Village of Bradley (the "Village") and Bond Safeguard Insurance Company ("Bond Safeguard"). The Village and Bond Safeguard are sometimes collectively referred to as the "Parties."

RECITALS

A. In order to secure the obligation of Kennedy Homes Limited Partnership by Kennedy Construction, Inc. (hereinafter "Kennedy") to make certain public improvements in the subdivision known as Kennedy Pointe of Summerfield Phase I, Bond Safeguard executed a performance bond known as Subdivision Bond, Bond No. 5008047, dated March 23, 2008, in the principal amount of \$2,500,000, which principal amount was later reduced to \$866,000. A copy of Bond No. 5008047 and riders is attached hereto and incorporated herein as Exhibit 1 (hereinafter "Phase I Performance Bond").

B. In order to secure the obligation of Kennedy Homes Limited Partnership by Kennedy Construction, Inc. (hereinafter "Kennedy") to make certain public improvements in the subdivision known as Kennedy Pointe of Summerfield Phase II, Bond Safeguard executed a performance bond known as Subdivision Bond, Bond No. 5021807, dated October 19, 2006, in the principal amount of \$961,156.00. A copy of Bond No. 5021807 is attached hereto and incorporated herein as Exhibit 2 (hereinafter "Phase II Performance Bond").

C. The Village commenced a lawsuit in the Circuit Court of the Twenty First Judicial Circuit, Kankakee County, Illinois, as Case No. 2012 L 133, in which the Village seeks recovery under the aforesaid Phase I Performance Bond and Phase II Performance Bond, and which case remains pending (hereinafter "Lawsuit").

D. The Parties have reached a resolution as to all matters related to the Phase I Performance Bonds and the Phase II Performance Bonds and as to all matters raised in the Lawsuit.

NOW, THEREFORE, in the consideration of the terms and conditions set forth in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Village, Bond Safeguard and Summerfield agree as follows:

1. **Recitals.** The Recitals above are incorporated into this Section 1 by reference as if set forth in full.
2. **Effective Date.** This Agreement shall become binding and effective on the date it is executed by all Parties (the "Effective Date").
3. **Escrow Agreement.** Upon five (5) business days following the Effective Date, there will be a deposit of funds in the total amount of \$719,991.49 by Bond Safeguard into an escrow account (hereinafter "Escrow Funds") with HomeStar Trust Company, 222 N. Industrial

Drive, Bradley, Illinois as the escrow agent (hereinafter "Escrow Agent"). Bond Safeguard will have no further rights, responsibilities or obligations with respect to the Escrow Funds and the Escrow Funds will be disbursed in accordance with a separate agreement between the Village and Summerfield South 170, LLC.

4. **Escrow Agent Costs and Fees.** The fees and costs of the Escrow Agent are 30 basis points of the amount of the Escrow Funds. In this case, that amount is \$2,159.97. Bond Safeguard shall pay all such Escrow Agent fees and costs directly to the Escrow Agent upon deposit of the Escrow Funds. Further, the Parties agree to execute and deliver such customary documents as may be required or convenient for the Escrow Agent to establish an escrow account to hold the Escrow Funds.

5. **Reimbursement of Costs.** The Parties acknowledge that the Village has incurred certain engineering, drafting, surveying, legal, administrative and clerical costs in this matter. In order to compensate the Village for these costs, upon five (5) business days following the Effective Date, Bond Safeguard shall pay over directly to the Village the amount of \$37,000.

6. **The Village's Release.** Upon deposit of the Escrow Funds with Escrow Agent, payment of the applicable fees and costs of the Escrow Agent and payment to the Village in accordance with Section 5 above, the Village hereby releases and forever discharges Bond Safeguard and its governing board, board members individually, principals, shareholders, members, owners, directors, officers, managers, administrators, employees, agents, representatives, insurers, attorneys, parent companies, subsidiaries, successors and assigns, and each of them, from all claims, demands, causes of actions, losses, expenses, liabilities, and damages, including attorneys fees and court costs, whether in contract or tort, statutory or otherwise, concerning or related to the Phase I Performance Bond or the Phase II Performance Bond or which the Village has asserted in the Lawsuit.

7. **Bond Safeguard's Release of the Village.** Upon deposit of Escrow Funds with Escrow Agent, payment of the applicable fees and costs of the Escrow Agent and payment to the Village in accordance with Section 5 above, Bond Safeguard hereby releases and forever discharges the Village and its governing board, board members individually, principals, shareholders, members, owners, directors, officers, managers, administrators, employees, agents, representatives, insurers, attorneys, parent companies, subsidiaries, successors and assigns, and each of them, from all claims, demands, causes of actions, losses, expenses, liabilities, and damages, including attorneys fees and court costs, whether in contract or tort, statutory or otherwise, concerning or related to the Phase I Performance Bond or the Phase II Performance Bond or which Bond Safeguard could asserted against the Village in this Lawsuit.

8. **Dismissal of Lawsuit.** Within fourteen (14) days after deposit of the Escrow Funds with Escrow Agent, payment of the applicable fees and costs of the Escrow Agent and payment to the Village in accordance with Section 5 above, the Village, through its legal counsel, shall prepare and present to the Court in Case Number 2012 L 133 a motion for entry of an agreed order dismissing the Lawsuit with prejudice as to Bond Safeguard. The dismissal order shall provide that each Party shall bear its own court costs and attorneys fees, except as otherwise provided in this Agreement.

9. **Breach of Agreement.** If any Party breaches this Agreement, such breach shall not affect or nullify the releases made or the other duties of any Party under this Agreement, regardless of whether such breach was material or immaterial. The prevailing party or parties in any proceeding to enforce this Agreement shall be entitled to recovery of its / their respective costs and reasonable attorneys' fees.

10. **No Admission of Liability.** The Parties understand and agree that this Agreement is the compromise of disputed claims and that the provisions of this Agreement, and the Parties' performance of this Agreement, are not to be construed as admissions of liability by any Party.

11. **No Third Party Beneficiary.** This Agreement is not intended to confer any rights upon any third party who is not a Party to this Agreement.

12. **No Assignment.** Each of the Parties represents that it has not assigned and will not attempt to assign any claim that has been or will be released pursuant to this Agreement.

13. **Claims Against Kennedy.** In consideration of the payments by Bond Safeguard as provided herein, the Village bargains, sells, transfers, conveys and assigns to Bond Safeguard its successors and assigns, all of the Village's right, title and interest in and to any and all causes of action, rights of action, demands, liens and claims, which the Village has against Kennedy related to or arising out of that certain subdivision known as Kennedy Point of Summerfield Phases I and Phase II and that certain Annexation Agreement pertaining to Kennedy Point of Summerfield Phases I and II insofar as it relates to the installation of public improvements and the allegations concerning Kennedy in the complaint filed by the Village in cause no 12 L 133 in the Seventeenth Judicial Circuit, Kankakee County, Illinois. The Village constitutes and appoints Bond Safeguard, its successors and assigns, its true and lawful attorney irrevocable, with power of substitution and revocation, for the use and at the proper charges of Bond Safeguard, to ask, demand, and receive payment to adjust, settle or compromise and to bring suit and to take all lawful ways for the recovery of the money due or to become due on the claims assigned hereby, and on payment to give full acquittance and discharge of the same.

14. **Understanding of Agreement and Advice of Counsel.** The Parties each understand their right to discuss all aspects of this Agreement with their legal counsel, and to the extent desired, they have done so. The Parties have carefully read and fully understand all provisions of this Agreement. Each Party represents that it has the capacity to enter into this Agreement and that it voluntarily enters into this Agreement.

15. **Choice of Law.** This Agreement shall be governed by, subject to, and construed in accordance with the laws of the State of Illinois without regard to conflict of law principles. Any action to enforce the terms of this Agreement must be commenced in the Circuit Court of Kankakee County, Illinois.

16. **Binding Effect and Interpretation.** The Parties intend this Agreement to be legally binding on them, and to inure to their benefit and the benefit of their respective legal representatives, successors and assigns. This Agreement has been jointly drafted by the Parties,

and in the event any court determines any provision of this Agreement to be ambiguous, the ambiguity shall not be construed against any Party.

17. **Execution in Counterparts.** This Agreement may be executed in counterparts. When all counterparts have been executed by all Parties and exchanged with all Parties electronically or in hardcopy, this Agreement shall be deemed fully-executed and binding as if all Parties had signed and exchanged the same originals.

18. **Integration.** This Agreement contains the entire agreement between the Parties, and supersedes any prior verbal or written agreement between the Parties concerning the subject matter of this Agreement. This Agreement may only be amended or cancelled by the subsequent written agreement of all Parties.

19. **Notices.** Any notice required to be made under the terms of this Agreement shall be deemed made if either party mails such notice by first class mail, postage prepaid, or sends such notice by fax, as follows:

As to the Village:

Kimberly Dickens, Village Administrator
Village of Bradley
147 S. Michigan
Bradley, IL 60915
Tel.: (815) 936-5108
Fax: (815) 933-9496

with a copy to

M. Neal Smith
Robbins Schwartz
9550 Bormet Drive, Suite 201
Mokena, IL 60448
Tel: (815) 722-6560
Fax: (815) 722-0450

As to Bond Safeguard Insurance Company:

Jeremy T. Sentman, PE PLS CFM
Surety Holdings Group
900 South Frontage Road
Suite 250
Woodridge, IL 60517
Tel.: (630) 487-2230
Fax: (630) 495-9272

with a copy to:

Bruce L. Maas
Harris Beach PLLC
99 Garnsey Road
Pittsford, NY 14534
Tel: (585) 419-8650
Fax: (585) 419-8812

20. **Authority to Execute.** Each of the undersigned signatories represents in his / her individual capacity that he / she has the power and authority to execute this Agreement on behalf of the Party represented.

This Agreement executed on the date last written below, by and between:

VILLAGE OF BRADLEY

By:

Bruce Maas

Title:

VILLAGE PRESIDENT

Date:

1/13/14

BOND SAFEGUARD INSURANCE
COMPANY

By: _____

Title: _____

Date: _____



SAVE

Discard changes

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More Actions



Reminder-RSLT-Bond Safeguard & Summerfield

1/27/2014 9:00am to 10:00am 1/27/2014 [Time zone](#)

All day Repeat...

Event details [Find a time](#)

Where

Video call [Add video call](#)

Calendar

Description check into to see if we got back our signed copies of these agreements that are attachments to R-1-14-1 and 2 from Robbins Swartz

Attachment [Add attachment](#)

Event color

Reminders

[Add a reminder](#)

Show me as Available Busy

Privacy Default Public Private

[Learn more about private vs public events](#)
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Add

Ente

Gues

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