

VILLAGE OF BRADLEY

RESOLUTION NO. R-1-14-2

**A RESOLUTION APPROVING A SETTLEMENT AGREEMENT AND
MUTUAL RELEASE WITH SUMMERFIELD SOUTH 170, LLC**

ADOPTED BY THE
BOARD OF TRUSTEES
VILLAGE OF BRADLEY

This 13 day of JANUARY, 2014

CERTIFICATE:



Michael J. LaGessee, Village Clerk

RESOLUTION NO. R-1-14-2

**A RESOLUTION APPROVING A SETTLEMENT AGREEMENT AND
MUTUAL RELEASE WITH SUMMERFIELD SOUTH 170, LLC**

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 under the aforesaid Phase I Performance Bond and Phase II Performance Bond, and which case remains pending; and

WHEREAS, the Village sought and obtained leave to add Summerfield South 170, LLC (“Summerfield”) as a defendant in Case No. 2012 L 133, but the Village and Summerfield 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 Village has no legal interest, whether by fee ownership easement or otherwise, in the real property that is the subject of Case No. 2012 L 133 and the Settlement Agreement referenced herein, and nothing in the Settlement Agreement obligates the Village to accept or is to be construed as a obligation that the Village accept any dedications that have been or may be made by Summerfield or any improvements that have been or may be made by Summerfield; 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 Summerfield is approved in substantially the form as attached in Exhibit A, subject to the review and approval of the Village Attorney.

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

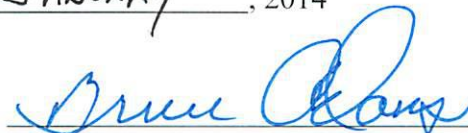
TRUSTEES:

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 Summerfield South 170, LLC ("Summerfield"). The Village and Summerfield 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 improvements in the subdivision known as Kennedy Pointe of Summerfield Phase I, Bond Safeguard Insurance Company ("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 (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 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 (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, among other relief, recovery under the aforesaid Phase I Performance Bond and Phase II Performance Bond, and which case remains pending (hereinafter "Lawsuit").

D. The Parties acknowledge and agree that the Village has no legal interest, whether by fee ownership, easement or otherwise, in the real property that is the subject of this Agreement, and that nothing in this Agreement obligates the Village to accept or is to be construed as an obligation that the Village accept any dedications that have been or may be made by Summerfield or any improvements that have been or may be made by Summerfield.

E. On October 24, 2013, by Court Order in the Lawsuit, the Village was granted leave to file an Amended Complaint to add Summerfield as a defendant in the Lawsuit because Summerfield is the current owner of the property that is the subject of this Agreement.

F. Each of the Parties denies and has raised or plans to raise defenses to any and all claims asserted against it in the Lawsuit.

G. The Parties have reached a resolution as to all matters related to the improvements related to the Phase I Performance Bond.

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 and Summerfield agree as follows:

1. **Recitals.** The Recitals above are incorporated into this Section 1 by reference as if set forth in full in this Section 1.

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.** Pursuant to separate agreement between the Village and Bond Safeguard, 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"). The Escrow Funds deposited are for the completion of all work required for the public improvements serving Kennedy Pointe of Summerfield Phase I, and which work is substantially listed on Exhibit 1, attached hereto and incorporated herein, and which work will hereinafter be referred to as the "Deficiency Improvements." With respect to the Deficiency Improvements, the Parties also agree as follows:

- The Deficiency Improvements include improvements in Phase II and on Larry Power Road that serve Phase I. The Deficiency Improvements do not include constructing a road culvert and roadway to extend Yorktown Drive over an unnamed tributary of Soldier Creek;
- The Deficiency Improvements include the requirement that Yorktown Drive shall be extended approximately 150 feet;

- The required area of HMA Binder Course Repair Patches shall be determined by inspection by the Village Engineer prior to placement of the HMA Surface Course.

4. **Completion of Deficiency Improvements.** Summerfield agrees to complete the Deficiency Improvements in accordance with Section 3 above by July 15, 2014. The Escrow Funds will be held by Escrow Agent until the Deficiency Improvements are completed to Village's satisfaction, as certified by the Village's engineer to the Escrow Agent. Following said certification by the Village's engineer that the Deficiency Improvements are complete, the Escrow Funds will be payable to Summerfield. If the Deficiency Improvements are not completed to the Village's satisfaction by July 15, 2014, then, upon written notice by the Village to the Escrow Agent and to Summerfield, the Escrow Funds shall be immediately, and without further action, paid over by the Escrow Agent to the Village for use in completion of the Deficiency Improvements, and Summerfield will forfeit any right to the Escrow Funds. The Village does not, by entering into this Agreement, assume any duty to complete the required Deficiency Improvements beyond the availability of the Escrow Funds.

5. **Phase II Improvements.** The parties understand and agree that before the Village will issue any building permits for Kennedy Pointe of Summerfield Phase II or give any approvals for improvements to be constructed thereon, the public improvements for Kennedy Pointe of Summerfield Phase II must be completed to the satisfaction of the Village's engineer. The Parties agree that the Village, at its sole cost and discretion, may record this Agreement with the Kankakee County Recorder, or some other memorandum sufficient to show the restrictions as to Phase II described in this Section.

6. **Dismissal of Lawsuit.** Within fourteen (14) days after deposit of Escrow Funds with Escrow Agent by Bond Safeguard, or as soon thereafter as the Court in Case No. 2012 L

133 may hear the Village's motion for entry of dismissal order, the Village, through its legal counsel, shall prepare and present to the Court for entry an agreed order dismissing the Lawsuit without prejudice as to Summerfield. The dismissal order shall provide that each Party shall bear its own court costs and attorneys fees.

7. **Indemnification.** Summerfield shall defend, indemnify and hold the Village harmless from and against all claims, liability, loss and expense, including reasonable collection expenses, attorneys' fees and court costs which may arise because of Summerfield's performance of its obligations under this Agreement. This clause shall survive termination of the Agreement.

8. **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.

9. **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.

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

11. **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.

12. **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.

13. **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.

14. **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. The provisions of this Agreement are severable and no provision shall be affected by the invalidity of any other provision. 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.

15. **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.

16. **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.

17. **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 Summerfield South, LLC

Brandon L. Sisk
Summerfield South 170, LLC
17400 Oak Park Ave.
Tinley Park, IL 60477
Fax: (708) 614-5710

18. **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 Adams*
Title: VILLAGE PRESIDENT
Date: 1/14/14
8:44
13

SUMMERFIELD SOUTH, LLC
By: _____
Title: _____
Date: _____

VILLAGE OF BRADLEY
KENNEDY POINTE OF SUMMERFIELD & LARRY POWER ROAD
SETTLEMENT AGREEMENT AND MUTUAL RELEASE

	QTY	UNIT
EXTEND YORKTOWN DRIVE ~150'		
Earth Excavation		1 L.S.
Geotextile Stabilizer Fabric		700 S.Y.
Aggregate Base Course CA#6 - 10 Inch		700 S.Y.
Bituminous Material (Prime Coat), MCH30		200 GAL
HMA Binder Course, IL-19 0, N50 - 2 Inch		700 S.Y.
HMA Surface Course, Mix"c"- N50, 1.5 Inch		700 S.Y.
Concrete Curb & Gutter, B6.12		300 L.F.
PCC Sidewalk		1500 S.F.
ROADWAY REPAIR AND PAVING		
HMA Binder Course Repair Patches		6000 S.Y.
Bituminous Material (Tack Coat), RCH70		3800 GAL
HMA Surface Course, Mix"c"- N50, 1.5 Inch		36,900 S.Y.
STORM SEWER WORK - NE DETENTION		
Storm Sewer, TY1 - 15" RCP, Gasketed		955 L.N.
PCC End Section, 15" Dia.		2 EA
Inlet, TY A w/ EJIW #1020 - M1 Fr & Gr		1 EA
Manhole, TY A - 4' Dia. w/ EJIW #1020 - M1 Fr & Gr		3 EA
WATER MAIN - PER AQUA ILLINOIS SPECIFICATIONS		
Steel Casing Pipe - 18" Dia. w/Spacers & End Seals		70 L.F.
D.I. Water Main - 8" Dia., w/Polywrap		422 L.F.
Tapping Sleeve & Valve - 8" Dia.		1 EA
D.I. 45 Degree Bend SJ - 8" Dia.		5 EA
Cutting-In Sleeve		1 EA
D.I. TEE, SJ - 8"x8"x6" Dia.		1 EA
Fire Hydrant - 5" Dia w/6" Gate Valve & Box		1 EA
Rock Excavation		1 L.S.
MISCELLANIOUS		
Sidewalk Removal		30 S.F.
Concrete Curb & Gutter Removal		22 L.F.
Concrete Curb & Gutter, M3.12		22 L.F.
Street Light		1 EA
LANDSCAPING AND EROSION CONTROL		
Turf Restoration - Seeding		5 AC
Erosion Control Measures as Needed		1 L.S.
Stop Sign and Street Sign Adjustments		1 L.S.
LARRY POWER ROAD		
Street Light		4 EA
Manhole Restrictor Adjustment		1 EA

*All quantities are approximate and only major work items are listed. The work shall include constructing all improvements shown on the Kennedy Pointe of Summerfield Phase I & II Deficiency Improvements except that work related to the Yorktown Road crossing of the unnamed tributary of Soldier Creek. This work is meant to accomplish the completion of all Public Improvements serving Kennedy Point of Summerfield Phase I. Work required in Phase II serves Phase I

