

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

I. PARTIES:

The Parties to this agreement are Frank and Susan Bartholomew ("Bartholomews"), and the City of Oregon City ("Oregon City").

II. RECITALS:

A. Bartholomews have filed a lawsuit against Oregon City in the Circuit Court for Clackamas County, Oregon, Case No. 17CV36446. Oregon City is a municipal corporation organized and existing under the laws of the State of Oregon. The lawsuit involves the collapse of the real property and improvements located at 13776 Canyon Court in Oregon City, Oregon (the "Real Property"). The Bartholomews are the owners of the Real Property. The caption of the lawsuit is as follows:

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF CLACKAMAS

Frank Bartholomew and Susan)	Case No. 17CV36446
Bartholomew, individuals,)	
)	
Plaintiffs,)	
)	
v.)	
)	
City of Oregon City, an Oregon)	
Municipality; Bankers Standard)	
Insurance Company, a Pennsylvania)	
Insurance Company and Chubb)	
Insurance, a Missouri Insurance)	
Company,)	
)	
<u>Defendants.</u>)	

B. In the lawsuit, Bartholomews have also sued their insurance carrier that issued a property and casualty policy on the Improvements, Bankers Standard Insurance Company (the "Carrier"), for failure to pay insurance proceeds covering the damages to the Improvement on the Real Property. Bartholomews have settled the lawsuit with the Carrier, and that settlement is memorialized in a separate Settlement and Release Agreement, which is not a public record.

C. Pursuant to the terms of the following settlement with Oregon City, the Bartholomews agree to demolish and remove the wood frame house and structural improvements down to and not including the foundation. Upon completion of such demolition and removal, Bartholomews will deed the Real Property to Oregon City in fee simple and Bartholomews will have no further interest in or obligations relating to the Real Property.

D. To resolve this matter without the need for further litigation, Bartholomews and Oregon City agree to a settlement of the lawsuit and issues in dispute pursuant to the terms and conditions set forth below.

III. AGREEMENT:

A. Demolition and Removal of Improvements on the Real Property Down to the Foundation.

1. As soon as practical after the signing of this Agreement by Bartholomews and Oregon City, Bartholomews will undertake the demolition and removal of the improvements on the real property, leaving in place only the foundation.

2. The first ten thousand dollars (\$10,000) of the cost to demolish and remove the improvements down to the foundation will be paid by the Bartholomews. Oregon City shall pay by reimbursement to Bartholomews the actual additional cost of demolition and removal over and above the \$10,000 paid by the Bartholomews up to an additional ten thousand dollars (\$10,000). If the cost of demolition and removal exceeds \$20,000, Bartholomews will pay such additional costs over and above \$20,000.

3. Bartholomews shall track the total costs of the demolition and keep all invoices and receipts, presenting such documentation to Oregon City with

an invoice for reimbursement of sums due Bartholomews from Oregon City under the preceding paragraph, if any, upon completion of the demolition and removal of the improvements down to the foundation. Oregon City will reimburse Bartholomews within twenty (20) days after receipt of Bartholomews' invoice to Oregon City.

4. Bartholomews bear the risk of loss and insurance during and until the demolition and removal is complete down to the foundation. Oregon City agrees to assist the Bartholomews' with the demolition by assisting in obtaining permits for the demolition and removal as the case may be.

5. Upon completion of the demolition and removal down to the foundation, Bartholomews shall deed the Real Property to Oregon City.

B. Mutual Release and Dismissal of the Clackamas County Action.

1. With the sole exceptions of the obligations of the Parties set forth in this Agreement, and for and in consideration of the agreements of Oregon City set forth herein, Bartholomews release, acquit, and forever discharge the City of Oregon City, and its former and current agents, officials, officers, employees, board members, members of the City Commission, representatives, insurers, third party administrators, successors, and assignees in their individual and official capacities from any and all known or unknown actions, causes of actions, causes of suits, claims, demands, personal injury, property damage or other loss and damages arising from or in any way connected with or based upon the damage to the Real Property and incidents which occurred as described in the pleadings of the above-captioned lawsuit and for all incidents up to the date of the transfer of the title to the property to Oregon City.

2. Bartholomews acknowledge and agree that the release and discharge set forth above is a general release; and they expressly waive and assume the risk of any and all damages or injuries which may exist as of the date of this Agreement, or in the future, that of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and Bartholomews hereby expressly waive and relinquish any and all rights under any law or statute to the contrary.

3. Bartholomews understand this settlement is a compromise settlement of a disputed claim. They further agree that this settlement is not

to be considered as an admission of any responsibility for any damage or violations of any law caused to them, whatsoever, in whole or in part, by the parties released, their agents, officers, employees, or representatives, and it is agreed that this release is not admissible in any proceeding to prove liability or fault of the parties being released herein, or to prove a custom, practice or policy of wrongdoing by the parties being released herein.

4. Bartholomews further agree and hereby acknowledge that the consideration provided to them in this agreement is the total amount of consideration that they are receiving and that there will be no further payment of money to them for damages, attorneys' fees, costs, and disbursements.

5. Bartholomews agree to enter an order of dismissal with prejudice and without costs, disbursements and/or attorney fees of the complaints filed in the above-captioned lawsuit; and they agree that they are not a "prevailing party" as a result of this settlement as that term is used in any state statute or rule.

6. In entering into this Settlement Agreement, Bartholomews represent that they have relied upon the advice of their attorneys, who are attorneys of their own choice, and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by them.

7. Bartholomews represent and warrant that no other person or entity has any interest in the Real Property; that there are no liens against the Real Property; and that no other person or entity has any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement and the pleadings in this lawsuit; that they have the sole right and exclusive authority to execute this Settlement Agreement; and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action or interest in the Real Property referred to in this Settlement Agreement.

8. With the sole exceptions of the obligations of the Parties set forth in this Agreement, and for and in consideration of the agreements of Bartholomews set forth herein, Oregon City releases, acquits, and forever discharges the Bartholomews, and their former and current agents, employees, representatives, insurers, third party administrators, successors, and assignees in their individual and official capacities from any and all

known or unknown actions, causes of actions, causes of suits, claims, demands, personal injury, property damage or other loss and damages arising from or in any way connected with or based upon the damage to the Real Property and incidents which occurred as described in the pleadings of the above-captioned lawsuit and for all incidents up to the date of the transfer of the title to the property to Oregon City.

9. Oregon City acknowledges and agrees that the release and discharge set forth above is a general release; and it expressly waives and assumes the risk of any and all damages or injuries which may exist as of the date of this Agreement, or in the future, that of which it does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and Oregon City hereby expressly waives and relinquishes any and all rights under any law or statute to the contrary.

10. Oregon City understands this settlement is a compromise settlement of a disputed claim. It further agrees that this settlement is not to be considered as an admission of any responsibility for any damage or violations of any law caused to it, whatsoever, in whole or in part, by the parties released, their agents, officers, employees, or representatives, and it is agreed that this release is not admissible in any proceeding to prove liability or fault of the parties being released herein, or to prove a custom, practice or policy of wrongdoing by the parties being released herein.

11. Oregon City further agrees and hereby acknowledges that the consideration provided to it in this agreement is the total amount of consideration that it is receiving and that there will be no payment of money to it for damages, attorneys' fees, costs, and/or disbursements.

12. Oregon City agrees that it is not a "prevailing party" as a result of this settlement as that term is used in any state statute or rule.

13. In entering into this Settlement Agreement, Oregon City represents that it has relied upon the advice of its attorneys, who are attorneys of their own choice, and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by it.

C. Additional Provisions.

1. This Agreement constitutes the entire understanding between the parties to this settlement agreement. The parties have not relied on any oral statements or representations not reduced to writing and included in this Agreement. The parties have not relied on any written statements or representations not included in this Agreement. Any modifications to this Agreement must be made in writing and signed by all of the parties to this agreement. Any attempts to modify this agreement in the absence of a signed, written modification by all of the parties is invalid and unenforceable.

2. If any provision of this Agreement is held by a court of competent jurisdiction to be either invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect unimpaired by such holding.

3. This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon.

4. All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms of this Settlement Agreement.

5. In the event of legal action of any kind or nature to enforce the terms of this Agreement is commenced by any party or parties, the prevailing party or parties shall be entitled to an award of attorney fees, witness fees, expert fees, disbursements, and costs against the other party or parties at the trial or proceeding on the matter, on appeal, and in any other alternated dispute proceeding.

6. This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.


7. This Agreement contains the entire agreement between the parties, their agents, officers, employees, and representatives, and it is agreed that the terms of this Agreement are contractual and not a mere recital.

8. This Settlement Agreement shall become effective only upon the signing of the Agreement by all of the parties.

9. Nothing in this Agreement, expressed or implied, is intended nor shall it be construed to confer on any person, other than the parties to this Agreement, any right, remedy, claim, or defense under, by, or through this Agreement, and this agreement does not give any third party any rights as a third party beneficiary of this agreement.

**THIS AGREEMENT IS BEING SIGNED VOLUNTARILY
AND AFTER HAVING BEEN READ AND UNDERSTOOD.**

DATED: 2018


By: Susan Bartholomew


By: Frank (Bart) Bartholomew

DATED: 2018

CITY OF OREGON CITY

By:
Its: _____