

SETTLEMENT AGREEMENT

This Agreement is between Harp & Eagle, Ltd. ("Plaintiff"), a corporation organized and existing under the laws of the State of Wisconsin, and the City of Waukesha, Wisconsin (the "City"), a municipal corporation organized and existing under the laws of the State of Wisconsin.

1. Definitions. In this Agreement:

(a) The "Property" means the land and improvements located at 314 West Main Street, Tax Parcel No. 1305339 within the City.

(b) "Case" means the action pending in the circuit court for Waukesha County, Wisconsin titled *Harp & Eagle, Ltd. v. City of Waukesha*, Case No. 18-CV-1273.

(c) "Court" means the Circuit Court for Waukesha County.

(d) A "tax year" means a year in which an assessment is made as of January 1, with taxes based on the assessment payable in the year following the tax year.

2. Refund of Taxes. The City shall issue a refund payable to Harp & Eagle, Ltd., or to another account designated by Plaintiff in writing, pursuant to Wis. Stat. § 74.37, in the amount \$11,082 for 2018 and \$10,948 for 2019 for a total of \$22,031 as a refund of property taxes previously paid by or billed to Plaintiff based on the property tax assessment of the Property for the tax year 2018 and 2019. The check for the refund shall be delivered to Plaintiff's undersigned counsel at 22 East Mifflin Street, Suite 700, Madison, Wisconsin, 53703. The parties agree that no portion of this amount constitutes interest.

3. 2020 Assessment. Plaintiff agrees that it will not object or otherwise appeal the 2020 assessment of the Property provided the assessment does not exceed \$1,220,000.

4. Waiver of Costs. Each party waives all claims for costs and/or interest.

5. Time of Payments. The City shall pay the refund of tax for the 2018 tax year in full, as provided in Section 2 of this Agreement, within 30 days of the date this Agreement is signed by both parties. The City shall pay the refund of taxes for the 2019 tax year in full, as provided in Section 2 of this Agreement, no later than September 1, 2020.

6. Stipulation for Dismissal. No later than fifteen (15) days after Plaintiff's counsel receives payment in full of the refund of taxes provided in Section 2 of this Agreement, the parties shall (a) enter into a stipulation, attached hereto as Exhibit A, signed by their respective attorneys, for the dismissal of the Case (including, but not limited to, all claims asserted in the Complaint in the Case) on the merits, with prejudice, and without costs to either party; and (b) file the stipulation with the Court.

7. Responsibility for Fees and Expenses of Attorneys and Experts. Each party shall be solely responsible for the fees of its attorneys and experts.

8. No Representations. Each party acknowledges and agrees that no representation or promise not expressly contained in this Agreement has been made by the opposing party or any of its employees, attorneys, agents, or representatives. Each party acknowledges that it is not entering into this Agreement on the basis of any such representation or promise, express or implied.

9. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors, and assigns.

10. Governing Law. This Agreement shall be governed and interpreted by the laws of the State of Wisconsin.

11. Attorney's Fees (Enforcement of Agreement). If any party breaches any of the terms of the Settlement Agreement, the non-breaching party shall be entitled to recover from the breaching party the reasonable, actual costs, expenses and actual attorney's fees incurred by the nonbreaching party in connection with the enforcement of this Settlement Agreement.

12. Interpretation of Agreement. The parties acknowledge that this Agreement is the product of joint negotiations. If any dispute arises concerning the interpretation of this Agreement: (a) neither party shall be deemed the drafter of this Agreement for purposes of its interpretation; and (b) the parties shall attempt in good faith to resolve the dispute. The parties agree that the Court retains jurisdiction to enforce this Agreement and that a party may ask the Court to enforce this Agreement by filing a motion in the Case and serving the same on the other party.

13. Representation By Counsel; Reliance. Each party acknowledges that it has been represented throughout all negotiations leading up to this Agreement by attorneys of its choice and that its attorneys have approved this Agreement. Each party represents that in entering into this Agreement, the party has relied on its own judgment and on the advice of its attorneys, and that no statements or representations made by the other party or any of its agents, except statements or representations expressly made in this Agreement, have influenced or induced the party to sign this Agreement.

14. No Assignment or Transfer. Plaintiff represents and warrants that it has not assigned or transferred to anyone and will not assign or transfer to anyone any of the claims in the Case.

15. Entire Agreement. This Agreement states and constitutes the entire agreement of the parties concerning its subject matter and supersedes all prior or contemporaneous agreements (written or oral), representations, negotiations, and discussions concerning its subject matter, including but not limited to, all agreements (written or oral), representations, negotiations, and discussions made in the course of mediation of the Case.

16. Use of this Agreement. This Agreement shall not be filed with the Court in this Case or in any other case or proceeding, except for the purpose of enforcing this Agreement. This Agreement and any part of this Agreement shall not be admissible in the lawsuit or in any future judicial or administrative proceeding and shall not be offered as evidence or presented by

any Party in the Lawsuit or any future judicial or administrative proceeding, except for the purpose of enforcing this Agreement.

17. No Admissions of Liability or Concerning Assessments or Fair Market Value. This Agreement is the settlement of disputed claims. By entering into this Agreement, the City does not admit any liability to Plaintiff for any of the claims asserted in the Case or Plaintiff's objections to the assessments, and the payments made under this Agreement shall not be construed as an admission of any such liability. Except as explicitly provided herein, neither Party makes an admission about the assessments or the fair market value of the Property as of January 1, 2018, January 1, 2019, and January 1, 2020, or any other date nor any other admission concerning the assessment of Plaintiff's property. In addition, none of the agreed upon values or assessments as of January 1, 2018, January 1, 2019, and January 1, 2020 shall be admissible in any proceeding or assessment challenge in any subsequent year.

18. Waiver. No waiver of any breach of this Agreement shall be deemed a continuing waiver of that breach or a waiver of any other breach of this Agreement.

19. Amendments or Modifications. This Agreement may not be amended, modified or altered in any manner whatsoever, except by a further written agreement duly authorized and signed by the parties.

20. Authorization to Sign Agreement. Each person signing this Agreement on behalf of either party represents and warrants that the person holds the position indicated beneath the person's signature and that the person has the requisite corporate or other authority to sign this Agreement on behalf of the party. Each party represents that entry into this Agreement is not in contravention of any agreement or undertaking to which the party is bound.

21. Reading of Agreement. Each person signing this Agreement on behalf of either party acknowledges that the person has read this Agreement, that the person understands the terms and conditions of this Agreement, that the person (if other than an attorney for the party) has been advised by legal counsel concerning this Agreement, and that the person freely and voluntarily signs this Agreement.

Dated: _____, 2020.

HARP & EAGLE, LTD

BY: Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street, Suite 700
Madison, WI 53703

Don M. Millis
State Bar ID No. 1015755
Sara Stellpflug Rapkin
State Bar ID No. 1076539
Shawn E. Lovell
State Bar ID No. 1079801

Dated: _____, 2020.

APPROVED AS TO FORM

BY: West & Dunn
1308 Washington Street
Two Rivers, WI 54241

John M. Bruce
State Bar ID No. 1005232

Dated: _____, 2020.

CITY OF WAUKESHA

By:

EXHIBIT A

STATE OF WISCONSIN
CIRCUIT COURT
WAUKESHA COUNTY

HARP & EAGLE, LTD.,

Plaintiff,

v.

Case No. 18-CV-1273
Money Judgment - 30301

CITY OF WAUKESHA,

Defendant.

STIPULATION FOR DISMISSAL

IT IS STIPULATED by the parties, through their respective counsel, as follows:

1. This action involves Harp & Eagle, Ltd. and the City of Waukesha (the "City's") assessment of the land and improvements located at 314 West Main Street, within the City and is identified in the City's records as Tax Parcel No. 1305339 (the "Property").
2. This action shall be dismissed with prejudice and without costs and fees to any party.
3. The parties have entered into a separate Settlement Agreement resolving, among other things, the claims raised in this action. The Court shall retain jurisdiction and competency over this matter in order to enforce this Stipulation or the Settlement Agreement. Any party may reopen this matter by motion to this Court in the event of a violation or alleged violation of this Stipulation or of the Settlement Agreement.

IT IS FURTHER STIPULATED that an Order to this effect may be entered without further notice to either party.

Dated: _____, 2020.

HARP & EAGLE, LTD.

BY: Reinhart Boerner Van Deuren s.c
22 East Mifflin Street, Suite 700
Madison, WI 53703

Don M. Millis
State Bar ID No. 1015755
Sara Stellpflug Rapkin
State Bar ID No. 1076539
Shawn E. Lovell
State Bar ID No. 10798018

Dated: _____, 2020.

CITY OF WAUKESHA

BY: West & Dunn
1308 Washington Street
Two Rivers, WI 54241

John M. Bruce
State Bar ID No. 1005232

STATE OF WISCONSIN
CIRCUIT COURT
WAUKESHA COUNTY

HARP & EAGLE, LTD.,

Plaintiff,

v.

CITY OF WAUKESHA,

Defendant.

Case No. 18-CV-1273
Money Judgment - 30301

ORDER FOR DISMISSAL

Based upon the Stipulation of the parties filed on _____,

IT IS HEREBY ORDERED that the above-entitled action, including all claims that were asserted or that could have been asserted, is hereby dismissed in its entirety upon its merits, with prejudice and without costs to any party.